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ABSTRACT

This report, the second in a series of independent analyses by The National Council on Disability on federal enforcement of civil rights laws looks at more than two decades of federal monitoring and enforcement of compliance with Part B of the Individuals with Disabilities Education Act (IDEA). Separate parts of the report address: (1) development of the original law and its evolution; (2) experiences and perspectives of students with disabilities and their families; (3) Department of Education (DOE) grant administration, compliance-monitoring, compliance-handling, and enforcement functions; (4) how the DOE has described its monitoring/compliance functions over time; (5) three cases in which states have developed new approaches to compliance monitoring; (6) the functions of the Department of Justice (DOJ) in relation to IDEA; and (7) the technical assistance and public information materials the DOE funds or provides. A review of the DOE's monitoring reports of states between 1994 and 1998 found that every state was out of compliance with IDEA requirements to some degree, and that federal efforts to enforce the law have been inconsistent and ineffective. The report includes recommendations to strengthen the capacity of both the DOE and the DOJ to enforce IDEA more effectively. Appendices include further information on IDEA, monitoring outcomes, and recommendations. (Contains 337 references.) (CR)

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Back to School on Civil Rights

Advancing the Federal Commitment To Leave No Child Behind

EC307654

NATIONAL COUNCIL ON DISABILITY

January 25, 2000

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Back to School on Civil Rights—Advancing the Federal Commitment To Leave No Child Behind

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NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

LETTER OF TRANSMITTAL

January 25, 2000

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit a report entitled *Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind.* This report is the second in a series of independent analyses by NCD of federal enforcement of civil rights laws.

The series grew out of NCD's national policy summit of a diverse group of more than 300 leaders from the disability community, where the participants called on NCD to push for more effective enforcement of existing civil rights laws. NCD produced the first report, *Enforcing the Civil Rights of Air Travelers with Disabilities*, in March 1999. The third report on enforcement of the Americans with Disabilities Act will be released in spring 2000.

Back to School on Civil Rights looks at more than two decades of federal monitoring and enforcement of compliance with Part B of IDEA. Overall, NCD finds that federal efforts to enforce the law over several Administrations have been inconsistent and ineffective. Despite the important efforts of your Administration to be more aggressive than any of its predecessors in addressing these compliance problems, failures to ensure local compliance with Part B requirements continue to be widespread and persist over many years. Enforcement of the law is too often the burden of parents who must invoke formal complaint procedures and request due process hearings to obtain the services and supports to which their children are entitled under law. The report includes recommendations for your Administration and Congress that would build on the1997 reauthorization of IDEA.

NCD stands ready to work with you and all public and private stakeholders to address the problems identified in this report and to advance a federal approach to enforcement that results in improved compliance and better outcomes for children and families, so that the nation's 25-year-old commitment to effective education for all children will be more fully realized.

In your 1997 State of the Union address, you made clear that your number one priority is to ensure that all Americans have the best education in the world. We share your commitment.

Sincerely,

Marca Bristo

Marca Bristo
Chairperson

(This same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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Executive Summary

Twenty-five years ago, Congress enacted and President Gerald Ford signed the Education for All Handicapped Children Act, one of the most important civil rights laws ever written. The basic premise of this federal law, now known as the Individuals with Disabilities Education Act (IDEA), is that all children with disabilities have a federally protected civil right to have available to them a free appropriate public education that meets their education and related services needs in the least restrictive environment. The statutory right articulated in IDEA is grounded in the Constitution's guarantee of equal protection under law and the constitutional power of Congress to authorize and place conditions on participation in federal spending programs. It is complemented by the federal civil rights protections contained in section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act.

This report, the second in a series of independent analyses by the National Council on Disability (NCD) of federal enforcement of civil rights laws, looks at more than two decades of federal monitoring and enforcement of compliance with Part B of IDEA.[*] Overall, NCD finds that federal efforts to enforce the law over several Administrations have been inconsistent, ineffective, and lacking any real teeth. The report includes recommendations to the President and the Congress that would build on the 1997 reauthorization of IDEA. The intent is to advance a more aggressive, credible, and meaningful federal approach to enforcing this critical civil rights law, so that the nation's 25-year-old commitment to effective education for all children will be more fully realized.

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[*] During the period between the research conducted for this report and its release, the Department of Education (DoED) designed and began to implement a new "continuous improvement monitoring system" in the fall of 1998. DoED believes its new system will address many of the longstanding problems with compliance monitoring identified in this report. This report does not attempt to assess the effectiveness of DoED's new monitoring system, in part because it has not been in effect long enough for its effectiveness to be measured fairly.

Background

In 1970, before enactment of the federal protections in IDEA, schools in America educated only one in five students with disabilities. More than 1 million students were excluded from public schools, and another 3.5 million did not receive appropriate services. Many states had laws excluding certain students, including those who were blind, deaf, or labeled "emotionally disturbed" or "mentally retarded." Almost 200,000 school-age children with mental retardation or emotional disabilities were institutionalized. The likelihood of exclusion was greater for children with disabilities living in low-income, ethnic and racial minority, or rural communities.

In the more than two decades since its enactment, IDEA implementation has produced important improvements in the quality and effectiveness of the public education received by millions of American children with disabilities. Today almost 6 million children and young people with disabilities ages 3 through 21 qualify for educational interventions under Part B of IDEA. Some of these students with disabilities are being educated in their neighborhood schools in regular classrooms. These children have a right to have support services and devices such as assistive listening systems, braille text books, paraprofessional supports, curricular modifications, talking computers, and speech synthesizers made available to them as needed to facilitate their learning side-by-side with their nondisabled peers. Post-secondary and employment opportunities are opening up for increasing numbers of young adults with disabilities as they leave high school. Post-school employment rates for youth served under Part B are twice that of older adults with disabilities who did not benefit from IDEA in school, and self-reports indicate that the percentage of college freshmen with a disability has almost tripled since 1978.

Findings

As significant as the gains over time are, they tell only part of the story. In the past 25 years states have not met their general supervisory obligations to ensure compliance with the core civil rights requirements of IDEA at the local level. Children with disabilities and their families are required far too often to file complaints to ensure that the law is followed. The Federal Government has frequently failed to take effective action to enforce the civil rights protections of IDEA when federal officials determine that states have failed to ensure compliance with the law. Although Department of Education Secretary Richard W. Riley has been more aggressive in his efforts to monitor compliance and take formal enforcement action involving sanctions than all his predecessors combined, formal enforcement of IDEA has been very limited. Based on its review of the Department of Education's monitoring reports of states between 1994 and 1998, NCD found:

- Every state was out of compliance with IDEA requirements to some degree; in the sampling of states studied, noncompliance persisted over many years.[**]

- Notwithstanding federal monitoring reports documenting widespread noncompliance, enforcement of the law is the burden of parents who too often must invoke formal complaint procedures and due process hearings, including expensive and time-consuming litigation, to obtain the appropriate services and supports to which their children are entitled under the law. Many parents with limited resources are unable to challenge violations successfully when they occur. Even parents with significant resources are hard-pressed to prevail over state education agencies (SEA) and local education agencies (LEA) when they or their publicly financed attorneys choose to be recalcitrant.

- The Department of Education has made very limited use of its authority to impose enforcement sanctions such as withholding of funds or making referrals to the Department of Justice, despite persistent failures to ensure compliance in many states.

- DoED has not made known to the states and the public any objective criteria for using enforcement sanctions, so that the relationship between findings of noncompliance by federal monitors and a decision to apply sanctions is not clear.

[**] Every state has a legal obligation to ensure compliance with the requirements of IDEA at the state and local levels. In this report, the term "out of compliance" means that a state has failed to ensure compliance with one or more requirements of the statute.

DoED Monitoring Model

The oversight model adopted by the Department of Education is multitiered and multipurpose. The Office of Special Education Programs (OSEP) distributes federal IDEA funding to the states and monitors the SEAs. The SEAs in turn monitor the LEAs to make sure they are in compliance with IDEA. In this tiered oversight model, the same Department of Education office (OSEP) distributes federal funds, monitors compliance, and enforces the law where violations are identified. The politics and conflicts inherent in administering these three disparate functions have challenged the Department's ability to integrate and balance the objectives of all three.

Data Sources and Summary of Analyses

As mentioned above, NCD found that the most recent federal monitoring reports demonstrated that every state failed to ensure compliance with the requirements of IDEA to some extent during the period covered by this review. More than half of the states failed to ensure compliance in five of the seven main compliance areas. For example, in OSEP's most recent monitoring reports, 90 percent of the states (n = 45) had failed to ensure compliance in the category of general supervision (the state mechanism for ensuring that LEAs are carrying out their responsibilities to ensure compliance with the law); 88 percent of the states (n = 44) had failed to ensure compliance with the law's secondary transition services provisions, which require schools to promote the appropriate transition of students with disabilities to work or post-secondary education; 80 percent of the states (n = 40) failed to ensure compliance with the law's free appropriate public education requirements; 78 percent of the states (n = 39) failed to ensure compliance with the procedural safeguards provisions of the law; and 72 percent of the states (n = 36) failed to ensure compliance with the placement in the least restrictive environment requirements of IDEA. In the two remaining major compliance areas, IEPs and protection in evaluation, 44 percent of the states (n = 22) failed to ensure compliance with the former and 38 percent of the states (n = 19) failed to ensure compliance with the latter.

Enforcement Authority

Currently, the U.S. Department of Education has neither the authority nor the resources to investigate and resolve individual complaints alleging noncompliance. The Department does consult with and share some of its enforcement authority with the U.S. Department of Justice (DOJ), which has no independent litigation authority. Yet between the date it was given explicit referral authority in 1997 and the date this report went to the printer, DoED had not sent a single case to DOJ for "substantial noncompliance," and had articulated no objective criteria for defining that important term. The Department of Justice, whose role has been largely limited to participation as an *amicus* in IDEA litigation, does not appear to have a process for determining what cases to litigate.

Overall Enforcement Action

Despite the high rate of failure to ensure compliance with Part B requirements indicated in the monitoring reports for all states, only one enforcement action involving a sanction (withholding) and five others involving imposition of "high risk" status and corrective action as a prerequisite to receiving further funds, have been taken. The only withholding action occurred once for a temporary period and was overruled by a federal court. Overall, the DoED tends to emphasize collaboration with the states through technical assistance and developing corrective action plans or compliance agreements for addressing compliance problems. There appear to be no clear-cut, objective criteria for determining which enforcement options ought to be applied and when to enforce in situations of substantial and persistent noncompliance.

Recommendations for Strengthening Federal Enforcement

NCD makes the following recommendations to strengthen the capacity of both the Department of Education and the Department of Justice to more effectively enforce IDEA:

- *Congress should amend IDEA to create a complaint-handling process at the federal level to address systemic violations occurring in a SEA or LEA. Congress should designate the Department of Justice to administer the process and allocate adequate funding to enable the Department to take on this new role. This new federal complaint process should be designed to complement, not supplant, complaint procedures and the due process hearing at the state level. The federal process should be simple to use and easy to understand by parents and students.*

- *Congress should amend IDEA to provide the Department of Justice with independent authority to investigate and litigate cases brought under IDEA. The Department of Justice should be authorized to develop and disseminate explicit criteria for the types of alleged systemic violation complaints it will prioritize given its limited resources.*

- *Congress should include in the amendment that the Department of Education and the Department of Justice shall consult with students with disabilities, their parents, and other stakeholders to develop objective criteria for defining "substantial noncompliance," the point at which a state that fails to ensure compliance with IDEA's requirements will be referred to the Department of Justice for legal action.*

- *Congress should ask the General Accounting Office (GAO) to conduct a study of the extent to which SEAs and LEAs are ensuring that the requirements of IDEA in the areas of general supervision, secondary transition services, free appropriate public education, procedural safeguards, and placement in the least restrictive environment are being met. In addition, the DoED Office of Inspector General (OIG) should conduct regular independent special education audits (fiscal and program). The purpose of the audits would be to examine whether federal funds granted under IDEA Parts B and D (State Program Improvement Grants) have been and are being spent in compliance with IDEA requirements. These audits should supplement OSEP's annual compliance-monitoring visits, and the audit results should be in DoED's annual report to Congress. To the extent that the DoED OIG lacks the subject-matter expertise to conduct program audits under IDEA, the OIG should contract with independent entities having such expertise when a program audit is necessary.*

- *The Department of Education should establish and use national compliance standards and objective measures for assessing state progress toward better performance outcomes for children with disabilities and for achieving full compliance with Part B.*

- *The Department of Education should consult with students with disabilities, their parents and other stakeholders in developing and implementing a range of enforcement sanctions that will be triggered by specific indicators and measures indicating a state's failure to ensure compliance with Part B.*

- *When Congress and the President approve an increase in the funding to be distributed to local schools under Part B, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total increase in Part B funding to be used to build the Department of Justice's and the Department of Education's enforcement, complaint-handling, and technical assistance infrastructure to effectively enable the federal agencies to drive improvements in state compliance and ensure better outcomes for children.*

Personnel Training Needs

Regular and special education teachers in many states are frustrated by the mixed messages regarding compliance from school administrators, local special education directors, state oversight agents, school district attorneys, and federal oversight agents. Teachers ultimately bear the responsibility to implement interventions and accommodations for students with disabilities, often without adequate training, planning time, or assistance. They must function within an educational system that often lacks adequate commitment, expertise, or funding to deliver appropriate services to every child who needs them. School administrators, special education directors, school principals, and agents of federal, state, and local governments must stop working at cross purposes and commit to working together to resolve, not conceal or ignore, these very real problems. If the Federal Government continues to refrain from taking enforcement action in the face of widespread failures to ensure Part B compliance, this atmosphere of questionable commitment to the civil rights of students with disabilities will continue.

Advocacy Service Needs

Pervasive and persistent noncompliance with IDEA is a complex problem with often dramatic implications on a daily basis for the lives of children with disabilities and their families.

Too many parents continue to expend endless resources in confronting obstacles to their child's most basic right to an appropriate education, often at the expense of their personal lives, their financial livelihoods, and their careers. Students are frustrated—their skills undeveloped and their sense of belonging tenuous. When informal efforts have failed to end unnecessary segregation or inappropriate programming for individual children, many have used the rights and protections afforded by IDEA to successfully challenge these injustices. Advocacy and litigation have been essential to ending destructive patterns of recurring noncompliance. Litigation has resulted in important victories for the children involved and better outcomes for other students with disabilities by exposing and remedying systemic noncompliance with IDEA. Yet legal services are often far beyond the financial reach of many families of students with disabilities.

Children with disabilities and their families are often the least prepared to advocate for their rights in the juvenile justice, immigration and naturalization, and child welfare systems when egregious violations occur. Children with disabilities and their families who are non-English speaking, or who live in low-income, ethnic or racial minority, and rural communities, are frequently not represented as players in the process. These individuals must be included and given the information and resources they need to contribute and advocate for themselves.

Recommendations for Training and Advocacy

Accordingly, NCD makes the following recommendations:

- *When Congress and the President approve an increase in the funding to be distributed to local schools under Part B of IDEA, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total Part B increase to fund free or low-cost legal advocacy services to students with disabilities and their parents through public and private legal service providers, putting competent legal assistance within their financial reach and beginning to level the playing field between them and their local school districts.*

- *The Department of Education should give priority support to the formation of a comprehensive and coordinated advocacy and technical assistance system in each state. The Department should develop a separate OSEP-administered funding stream to aid* *public and private advocacy entities in each state in collaborating to expand and coordinate self-advocacy training programs, resources, and services for students with disabilities and their parents throughout the state. Elements of the coordinated advocacy and technical assistance systems should include:*

- *The availability of a lawyer at every state Parent Training and Information (PTI) Center, a protection and advocacy agency, legal services, and independent living center to provide legal advice and representation to students with disabilities and their parents in advocating for their legal rights under IDEA.*

- *Self-advocacy training programs for students with disabilities and their parents focused on civil rights awareness, education and secondary transition services planning, and independent living in the community.*

- *The establishment of a national backup center with legal materials, training, and other supports available for attorneys working on IDEA cases and issues at the state level.*

- *Expansion of involvement by the private bar and legal services organizations in providing legal advice to students with disabilities and their parents in advocating for their legal rights under IDEA.*

- *Training in culturally sensitive dispute resolution to meet the needs of growing populations of citizens from racial and ethnic backgrounds having diverse traditions and customs. Multiple language needs and communication styles must be accommodated in all training.*

Full compliance with IDEA will ultimately be the product of collaborative partnership and long-term alliances among all parties having an interest in how IDEA is implemented. For such partnerships to be effective, all interested parties must be well prepared to articulate their needs and advocate for their objectives. To that end, coordinated statewide strategies of self-advocacy training for students with disabilities and their parents are vital. To make this happen, NCD recommends the following:

- *The Department of Education should fund additional technical assistance, training, and dissemination of materials to meet continuing needs in the following areas:*

    - *Culturally appropriate technical assistance, which should be available to ensure that American Indian children with disabilities, their families, tribal leaders, and advocates in every interested tribe can participate as full partners in implementing IDEA in their communities. Culturally appropriate training and technical assistance should be developed and delivered through the satellite offices of newly created disability technical assistance centers (DBTACs) managed and staffed primarily by Native Americans that serve American Indian communities around the country.*

    - *Training to enhance evaluation skills for parents to assess the effectiveness of their states' IDEA compliance-monitoring systems.*

    - *Training of the appropriate agents (officials, advocates, and other stakeholders) in the immigration and naturalization and child welfare systems in IDEA's civil rights requirements.*

    - *Training of the appropriate agents (officials, advocates, and other stakeholders) in the juvenile justice system in IDEA's civil rights requirements, how they apply within the juvenile justice system, and ways the law can be used to help minimize detention of children with disabilities in the juvenile justice system.*

A Six-State In-Depth Sample

NCD looked in depth at a sampling of six states, using the last three monitoring reports to assess the compliance picture in those states over time. The first two of the monitoring reports for these six states (covering a period from 1983–1998) included failure to ensure compliance with a total of 66 Part B requirements. Only 27 percent (n = 18) of the 66 violations had been corrected by the time of the third report. Based on the reported data, in 73 percent (n = 48) of the

66 violations, either the six states still failed to ensure compliance or no compliance finding was reported at all in the last monitoring report.[***]

To date federal compliance-monitoring and enforcement efforts have not fully dealt with the root causes of widespread noncompliance, and children with disabilities and their parents have suffered the consequences. This report details NCD's findings and recommendations for improving the effectiveness of federal efforts to ensure state compliance with IDEA and related legislation. NCD calls on Congress and the President to work together to address the inadequacies identified by this report so that children and families will have an effective and responsive partner in the Federal Government when they seek to ensure that IDEA's goals of enhanced school system accountability and improved performance outcomes for students with disabilities move from the language of the law to the reality of each American classroom.

IDEA mandates that school systems respond to the needs of individual children with disabilities, making education accessible to them, regardless of the severity of their disabilities. Teachers today know that education tailored to individual needs and learning styles can make all the difference in the quality of a child's learning, whether or not she has a disability. Very few public schools consistently and effectively deliver this individualized approach for all children. Accordingly, many children fall through the cracks, as performance on achievement tests across the nation demonstrates. Alternatives to traditional public education such as charter and private schools, as well as political calls for vouchers, indicate growing public dissatisfaction with schools that do not educate all children effectively. IDEA calls for a responsive public education system that meets the individual learning needs of students with disabilities. It also contains a blueprint for the future of public education—where no child is left behind, and all children have an equal opportunity to gain the knowledge and skills they need to fulfill their dreams.

[***] When no information was provided in a report about a particular requirement, it could mean that the state was compliant, that there was a "single cite" instance of noncompliance, or that compliance with the requirement was not monitored at all.

Ultimately, the enforcement of the civil rights protections of IDEA will make a difference to every child, not only children with disabilities. At the national summit on disability policy hosted by NCD in 1996, more than 350 disability advocates called for a unified system of education that incorporates all students into the vision of IDEA. NCD's 1996 report, *Achieving Independence*, presents the outline of a system in which every child, with or without a disability, has an individualized educational program and access to the educational services she or he needs to learn effectively. IDEA leads the way in reshaping today's educational system from one that struggles to accommodate the educational needs of children with disabilities to one that readily responds to the individual educational needs of all children.

Introduction

Background of This Report

Since the 1980s, NCD has commissioned a number of reports on the implementation of IDEA and its impact on children with disabilities. These studies presented statistical and qualitative findings on state and local implementation of IDEA from formal research projects, scholarly publications, testimony from grassroots hearings, and input from national and state advocacy organizations. The statutory framework of IDEA envisioned states as the primary implementers of IDEA to ensure the protections of the law for children with disabilities. Yet the findings in some of these reports suggested states were falling far short of meeting these responsibilities.

In 1996 NCD convened a diverse group of more than 350 disability community leaders from across the country at a National Summit on Disability Policy. At the summit, members of the education policy working group had summarized the state of enforcement of IDEA and other civil rights laws related to education as follows:

> Despite progress in the last decade in educating students with disabilities, current federal and state laws have failed to ensure the delivery of a free appropriate public education for too many students with disabilities. Students with disabilities often still find themselves in forced and inappropriate isolation, separated from their nondisabled peers. In other situations, students with disabilities are in regular classrooms with teachers with little or no training in how to educate students with disabilities and without the supports they need. Lack of accountability, poor enforcement, and systemic barriers have robbed too many students of their educational rights and opportunities and have produced a separate system of education for students with disabilities rather than one unified system that ensures full and equal physical, programmatic, and communication access for all students.

Parents and students across the country express a high level of frustration with the continued barriers they face to full participation and effective instruction.[1]

In addition, many advocacy organizations have reported numerous situations where parents have been unable to secure appropriate educational services for their children. The Disability Rights Education and Defense Fund (DREDF) and the National Association of Protection and Advocacy Systems (NAPAS) have represented such parents and families in court. Year after year their dockets have been replete with cases where students have not received the free appropriate public education in the least restrictive environment that the law envisions. Complaints and due process hearings have been pursued by parents in every state in the country in hopes of ensuring that the promise of the law will become a reality for their children. (Appendix B provides a list of obstacles faced by students with disabilities and their families that were intended to be addressed by IDEA.) Problems in all of these areas persist today.

The mandate of the 1996 summit and the above findings led to this study, which focuses on the Department of Education's roles, policies, and procedures related to enforcement and their impact on states' implementation and compliance with IDEA.

Purpose of This Report

This report focuses primarily on the enforcement mechanism, policies, and activities of the Department of Education in relation to IDEA. Because of its integral relationship to enforcement, our researchers carefully evaluated the Department of Education (DoED) compliance-monitoring system in use at the time our research was conducted. In the fall of 1998, however, after the major research for the report had been completed, the Department began implementing a new continuous-improvement monitoring system. Unless stated otherwise, the findings in this report on DoED's compliance monitoring pertain to the system in effect from 1975 to the fall of 1998. Although the new system introduces new elements that deserve to be evaluated on their own merit in a later study, it retains many strategies used in the old system.

The report also examines the relationship between the DoED and the Department of Justice (DOJ) with respect to shared enforcement responsibility for IDEA. It also assesses the selected technical-assistance and public-information materials developed or funded by the DoED that are intended for students with disabilities, their families, and advocates. NCD assessed the following specific areas:

- The effectiveness of the state monitoring and corrective-action processes in ensuring compliance with IDEA.
- The utilization of sanctions for noncompliant states and the effect of such sanctions in bringing about compliance.
- The utilization of high risk status, compliance agreements, and special conditions as enforcement mechanisms.
- The utilization and effectiveness of the state complaint procedures.
- The utilization of litigation to enforce the law.
- The collaboration with the Department of Justice in enforcing IDEA.
- The utilization of the Section 504 (Rehabilitation Act of 1973) complaint process for addressing IDEA/504 complaints.
- The perspectives of students with disabilities, parents, the Consortium for Citizens with Disabilities, state special education directors, and other stakeholders in relation to IDEA enforcement.
- The leadership effectiveness of DoED in ensuring compliance with the law and addressing obstacles encountered in ensuring nondiscrimination against students with disabilities in elementary and secondary education.
- The quality and availability of public information to students with disabilities, their families, and advocates on the provisions of IDEA.

Report Structure

This report is presented in eight parts. Part I, "The Law, the Compliance/Enforcement Scheme, and the Context," considers the development of the original law, the Education for All Handicapped Children Act, and its evolution over the past 25 years. It describes the past and current need for the law and its regulations, the basic requirements of the law, and the issues raised by the 1997 reauthorization. It presents a summary of the statutory framework for IDEA enforcement, describing the compliance/enforcement scheme for IDEA and how the federal enforcement mechanism is organized, including the Department of Education's relationship with the Department of Justice. It discusses the role of parent advocacy in driving enforcement throughout the last two decades. And finally, it gives a brief overview of the DoED's enforcement activity and offers findings and recommendations.

Part II, "Grassroots Perspectives on Noncompliance and Federal Enforcement of IDEA," discusses the experiences and perspectives of students with disabilities, their families, and advocates on enforcement.

Part III, "Grant Administration, Compliance-Monitoring, Complaint-Handling, and Enforcement Functions," describes the processes in place within the Department of Education that are intended to carry out these functions and the extent to which they are utilized. This part includes a discussion of the grant-making, oversight (including federal monitoring and complaint processes), and enforcement activities related to IDEA. It offers a description of the funding vehicles, monitoring activities, complaint-handling functions, and enforcement activities of the Department and presents an in-depth analysis of the 50 most recent monitoring reports issued by the Office of Special Education Programs (OSEP), along with a summary of the noncompliance findings throughout the country. Appendix G provides a state-by-state summary of noncompliance findings from the most recent monitoring reports. In addition, an analysis of state findings addresses the extent to which states that are out-of-compliance come into compliance over time. Various perspectives on the impact of compliance monitoring are discussed. Appendix H contains an overview of the new continuous monitoring system that replaces the monitoring system studied in this report. Findings and recommendations are provided following the major sections of this part.

Part IV, "The National Compliance Picture Over Time: Analysis of Annual Reports to Congress 1978–1998," considers how the Department of Education has described its monitoring/compliance functions over time and how it has presented its monitoring/compliance results. Findings and recommendations are presented.

Part V, "IDEA Litigation Challenging State Noncompliance," summarizes three cases in which states have developed new approaches to compliance monitoring that are now being tested. Findings and recommendations are offered.

Part VI, "The Role of the Department of Justice," describes the functions of the Department of Justice in relation to IDEA and provides a list of IDEA litigation that the Department has been involved in since the enactment of the law in 1975. Findings and recommendations are offered.

Part VII, "Improving Public Awareness: Technical Assistance and Public Information for Students with Disabilities, Their Families, and Advocates," reviews the technical assistance and public information materials the Department of Education funds or provides to these target audiences. Findings and recommendations are offered.

Part VIII, "Summary and Conclusions," completes the report with a summary of the study and our conclusions.

Scope of This Report

While this report addresses federal enforcement of IDEA carried out by DoED, it does not cover several significant aspects of implementation or enforcement. Specifically, it does not analyze due process procedures and private litigation, which are important IDEA enforcement mechanisms available to students, parents, and families, except as they relate to the federal enforcement mechanism. The report does not assess the performance of local education agencies (LEA) in implementing the requirements of IDEA, but does discuss findings on LEA compliance published in the Department of Education's monitoring reports evaluating state monitoring and enforcement efforts. The report does not attempt to assess the individual state complaint systems that are required to be available to parents in each state. Nor does it address the activities of the federally funded protection and advocacy systems (P&As) in representing thousands of parents in IDEA administrative procedures and litigation every year and in every state,[2] although it briefly discusses P&As' technical assistance activities.

This report briefly examines the overlapping enforcement within the Department of Education of IDEA, the Americans with Disabilities Act (ADA) Title II, and Section 504 of the Rehabilitation Act. Data about complaints received under Title II and Section 504 were collected and analyzed, and the findings appear in Appendix I. However, a full examination of federal enforcement of education-related Title II and Section 504 requirements is beyond the scope of this report.

Enforcement Research Perspectives

IDEA enforcement activities are considered from two perspectives. The whole agency approach examines the effectiveness of the DoED and all its components in achieving the enforcement objectives for which it is responsible. The whole law approach considers the overall effectiveness of DoED's external coordination and collaboration (i.e., interagency, with private organizations and with other levels of government) in achieving the enforcement objectives of the law.

Research Methodology

Several research approaches were used to conduct this study, namely (1) archival analysis, involving 62 OSEP Monitoring Reports, 19 Annual Reports by the Office of Special Education and Rehabilitative Services (OSERS) to Congress, and Office for Civil Rights (OCR) complaint data reviews; (2) qualitative analysis involving more than 25 interviews with DoED representatives, 14 interviews with state parent advocates representatives, and at least six interviews with representatives from various other national and state advocate constituencies; (3) a national town hall meeting with about 100 participants representing students with disabilities and parents from around the country; and (4) legislative analysis of IDEA and related legislation. The research activities for this study included the following:

- Identifying the functions and organizational components of federal enforcement activities in the U.S. Department of Education.
- Identifying, collecting, and analyzing material related to IDEA compliance monitoring and enforcement including the most recent monitoring reports for all states; all monitoring reports and corrective action plans in the possession of the Department of Education for six states (Oregon, Texas, California, Vermont, New York, and Illinois); enforcement and compliance correspondence between the DoED and states.
- Collecting and analyzing information related to state applications for IDEA Part B funding and enforcement activities that have flowed from that application process.
- Collecting information related to the general complaint process and the secretarial review process in DoED's Office of Special Education Programs.
- Collecting and analyzing Section 504 complaint data from the DoED's Office for Civil Rights.
- Collecting and analyzing annual reports to Congress and the President on IDEA from 1978–1998 to gain a historical perspective of how the federal monitoring and enforcement role is depicted for the public over time.
- Identifying, collecting, and analyzing information on DoED's IDEA public information activities.
- Conducting interviews with the responsible agency staff to understand the monitoring process and departmental functioning in relation to enforcement.
- Conducting interviews with staff in the Department of Justice responsible for IDEA litigation and gathering information about that litigation.
- Analyzing interactions and interrelationships of enforcement functions and their net impact in addressing noncompliance;
- Reviewing and evaluating of overall enforcement operations in light of the requirements, legislative history, and judicial interpretations of the law.
- Identifying issues and areas for improvement in the enforcement mechanisms and operations (e.g., gaps, duplication, overlaps, inconsistencies, and inadequacies).
- Conducting interviews with parents, advocates, and a representative of state directors of special education to discern their views of federal monitoring and enforcement of IDEA.
- Deriving conclusions and developing recommendations for the entire analysis.

- Consulting with stakeholder consultants on key findings and recommendations.
- National town meeting of students with disabilities, parents, and stakeholders for their input on report findings.

In summary, this report is intended to provide a picture of the status of the enforcement mechanism, including monitoring, related to IDEA in the Federal Government. It also presents an overview of the technical assistance information available to parents and families of children with disabilities that is funded by the Federal Government. The report considers how monitoring and enforcement activities have been carried out since the law's inception in 1975, and provides recommendations for improving federal compliance and enforcement efforts to support improvement of educational outcomes for students with disabilities.

I. The Law, the Compliance/Enforcement Scheme, and the Context

A. Introduction

In enacting P.L. 94-142, the Education for All Handicapped Children Act of 1975 (later renamed the Individuals with Disabilities Education Act, or IDEA),[3] Congress sought to end the long history of segregation and exclusion of children with disabilities from the American public school system. In the past three decades, this landmark legislation has yielded great progress in securing the educational rights of more than 5 million children with disabilities. Despite controversies in implementation, the law's assurance that a free appropriate public education must be available to all students with disabilities, no matter how significant their disability, has become a hallmark of education policy in the United States.

IDEA's mandates are complemented by two other key disability rights statutes, Section 504 of the Rehabilitation Act of 1973,[4] and Title II of the Americans with Disabilities Act (ADA).[5] Together, these three laws form the nondiscrimination framework for children with disabilities in public schools. IDEA applies to states as recipients of federal grants to be used in providing and administering special education for children with disabilities; Section 504 applies to all entities, including schools, that receive federal funds. Public school systems must comply with the ADA in all their services, programs, or activities (readily accessible to and usable by individuals with disabilities), including those that are open to parents or to the public.[6] Both IDEA and Section 504 require schools to make a free appropriate public education (FAPE) available to every child with a disability—regardless of the nature or severity of the disability—in the least restrictive environment (LRE). (See discussion below for further definition of FAPE and LRE.)

In enacting these laws, Congress attempted to address the longstanding discrimination faced by children with disabilities in the U.S. They have faced the same obstacles to full participation in public education as have other minority groups seeking to ensure their rights.

Introducing a bill on January 20, 1972, to protect the civil rights of people with disabilities, Senator Hubert H. Humphrey (D-MN) told the Senate:

> "I introduce...a bill...to insure equal opportunities for the handicapped by prohibiting needless discrimination in programs receiving federal financial assistance....
>
> The time has come when we can no longer tolerate the invisibility of the handicapped in America.... These people have the right to live, to work to the best of their ability—to know the dignity to which every human being is entitled. But too often we keep children whom we regard as 'different' or a 'disturbing influence' out of our schools and community activities altogether.... Where is the cost-effectiveness in consigning them to... 'terminal' care in an institution?"[7]

Senator Humphrey told Congress, "[M]ore than one million children are denied entry into public schools, even to participate in special classes." Before special education became available, children with disabilities were routinely warehoused in institutions, and if they were provided any education at all, it was often inferior and in separate facilities apart from their peers without disabilities.[8] Children with disabilities were often considered uneducable, disruptive, and their presence disturbing to children and adults in the school community.

By the early 1970s, parents of children with disabilities in 26 states had initiated litigation asserting their children's right to attend public schools under the 14th Amendment of the U.S. Constitution and the same equal protection arguments used on behalf of the African American school children in *Brown v. Board of Education*[9] in 1954. Two of these cases, *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* and *Mills v. Board of Education of the District of Columbia*[10], resulted in consent decrees that outlined the basic constitutional principles of the right to an appropriate education in the least restrictive environment for *all* children with disabilities and the procedural scheme that would later become federal law. Finally, in 1975, recognizing that the problem required a national solution, Congress passed the Education for All Handicapped Children Act.

Throughout the history of the struggle for equal educational rights, the parents of children with disabilities have fueled and guided special education reform. In 1981, six years after enactment of IDEA, the following letter was written by a parent to express her view on the prevalent practice of segregating children with disabilities in separate "handicapped-only" classes and schools despite the Act's mandate that requires placement in the least restrictive environment:

> "We are the parents of children attending Cameron School for Physically Handicapped students in El Cerrito, California, in the Richmond Unified School District. For all our children's school lives, they have had little or no opportunity to interact with their nondisabled peers.
>
> Segregated education is but another form of institutionalization, which we view as extremely detrimental to the growth and development of disabled and nondisabled children alike."[11]

The asserted reasons for segregating children with disabilities in educational settings—that a wheelchair is a fire hazard, that a child's IQ renders her uneducable, and the like—do not reveal the true basis for excluding them. The true basis is the expectation that the children will become dependent adults, unable to contribute to society. This view makes their childhood education seem futile—they will be dependent no matter how good their education. Compounded by widespread discrimination, inaccessible buildings, inaccessible transportation, and lack of adequate support services, these stereotypes were the reason for severely restricted options available to children and adults with disabilities and promoted segregated and inferior education.[12]

The inherent inequality of separate education and the permanent damage it inflicts were recognized by the Supreme Court in *Brown v. Board of Education*. In this unanimous decision, Chief Justice Earl Warren wrote:

> "To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone....
>
> We conclude that in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[13]

He further wrote that public education prepares children for economic and social participation in society:

> "[Education] is a principal instrument for awakening the child to cultural values, in preparing him for later...training, and in helping him to adjust normally to his environment. It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[14]

Education prepares children for their adult roles. Expecting children with disabilities to remain dependent throughout their lives, at least until 1975, was our national policy. State governments and local schools routinely excluded them from public education entirely, warehoused them in institutions, and provided them with inferior and separate education. Even when a child with a disability received sufficient elementary and secondary education to proceed to college, higher educational opportunities often remained limited by low expectations of future adult roles.

B. Basic Requirements of IDEA

IDEA is a complex statute, divided into Parts A, B, C, and D. Part A contains general provisions, including the findings and purposes of the law, the goals for the law, and definitions of terms used throughout the Act. It also clarifies the procedures regarding the U.S. Department of Education's use of policy letters and other correspondence. Part B, "Assistance for Education of All Children with Disabilities" describes how the Federal Government provides funding to assist the states in making available a free appropriate public education and carrying out the purposes of the Act, how the state education agencies (SEAs) supervise and monitor implementation, and how the SEAs and local education agencies (LEAs) must make available a free appropriate public education to students with disabilities ages three through 21. Part B also lays out the basic rights and responsibilities of children with disabilities and their parents. Part C, "Infants and Toddlers with Disabilities," describes the program for addressing the needs of infants and toddlers ages birth to three years old. Part D, "National Activities to Improve Education of Children with Disabilities," authorizes discretionary programs related to state improvement (i.e., for improving teacher preparation and credentialing or improving results for children with disabilities in geographic areas of greatest need). This report focuses primarily on Department of Education (DoED) enforcement of Part B.

IDEA sets forth a comprehensive scheme for ensuring two basic substantive rights of eligible children with disabilities:[15] (1) the right to a free appropriate public education, and (2) the right to that education in the least restrictive environment. The body of the law delineates a procedural framework to ensure these two substantive rights. Appendix C provides an overview of the basic rights and requirements: (1) free appropriate public education (FAPE), (2) least restrictive environment (LRE), (3) parent and student rights, (4) child-find, (5) evaluation procedures, (6) individualized education program (IEP), and (7) procedural safeguards. Three of those requirements—FAPE, LRE, and IEP—are briefly described below.

IDEA defines FAPE as special education and related services that meet the standards of the state education agency and are provided at public expense. These include appropriate preschool, elementary school, and secondary school education. The education is to be provided in accordance with the child's IEP, as described below. FAPE, for each child, is defined by that student's IEP.

IDEA mandates that students with disabilities be offered special education and related services in the least restrictive environment appropriate for the individual child with a disability. LRE is the environment that provides for maximum interaction with nondisabled children consistent with the disabled child's needs. This is the key substantive right of children with disabilities under IDEA and is often considered the linchpin of IDEA. It is sometimes called the "integration mandate." Every step away from the regular classroom must be accompanied by a compelling educational rationale, in light of the law's preference for educating children with disabilities in the regular classroom alongside their nondisabled peers.

The IEP is the centerpiece of IDEA. Parents use this tool to ensure that an appropriate program is developed to meet their child's unique needs. The IEP is a written statement that must contain specific information about the child's educational needs, levels of performance, annual goals, short-term objectives, and special education and related services and supplementary aids and services to be provided to the child. The IEP must explain the extent to which the child will not participate with nondisabled children in regular classes and include, among other elements, a statement of the child's transition needs beginning when the child reaches age 14 and a statement of how the child's progress toward annual goals will be measured. The IEP is developed, reviewed, and revised during meetings that include a representative of the school or agency, the child's teacher, the child's parents, the child (if appropriate), and other individuals who have knowledge or special expertise at the request of the parent or education agency.

C. Scope of IDEA

IDEA and the corresponding regulations set forth a comprehensive federal commitment to guarantee FAPE is made available in the least restrictive environment to each child with a disability regardless of the nature or severity of the child's disability. The statute and regulations apply to every state that receives federal funds under IDEA. Under the law, the Office of Special Education Programs (OSEP) is charged with ensuring implementation of the law through monitoring and enforcement activities. Within each state, IDEA applies to many overlapping entities, including, but not limited to, the following: (1) the state education agency, (2) all political subdivisions involved in the education of children with disabilities, (3) local and intermediate educational agencies, (4) other state agencies such as departments of mental health, which provide educationally related services to children with disabilities, (5) state schools for deaf and blind children, and (6) state correctional facilities.

IDEA applies to all public agencies that receive "direct or delegated authority to provide special education and related services in a state that receives funds under Part B," even if an agency receives no federal funds under Part B.[16] Further, any public agency that refers a child to a private program must ensure that the child's rights are protected in that setting.[17]

The SEA in a given state has the ultimate responsibility for educating children with disabilities in that state. SEAs and school districts that cannot provide all related services or special education classes, however, may contract with other organizations. Also, they may enter interagency agreements with other agencies—a state department of health, for example—to provide certain services on a statewide basis. Interagency agreements spell out several things—each agency's responsibility, the methods of payment, etc.

D. Legislative History

Congress first enacted IDEA in 1975 as the Education for All Handicapped Children Act (EHA), P.L. 94-142.[18] The law was intended to address numerous well-documented problems facing children with disabilities, which are detailed in Appendix B. EHA guaranteed all children with disabilities, ages three through 21, the right to FAPE in the LRE consistent with that goal. The first regulations implementing the EHA went into effect in 1977, adding requirements such as time lines for due process procedures. Although Congress has amended IDEA several times since 1975, most key provisions have not changed. Hence, current policy is guided by case law interpreting statutory provisions from the various versions of IDEA.

Early in his administration, President Reagan targeted IDEA for deregulation. After issuing draft changes to the IDEA regulations, the administration encountered tremendous opposition in hearings conducted by the DoED and in the extensive media attention they garnered. When opponents of the draft changes sent 30,000 letters to the White House, the Reagan Administration decided to leave the regulations in place.

In 1986, Congress enacted the Handicapped Children's Protection Act (HCPA)[19] in response to the *Smith v. Robinson*[20] Supreme Court decision. Among other things, HCPA added an attorney fee provision to IDEA, bringing special education up to par with other civil rights statutes and allowing parents who prevail in due process hearings and court to be reimbursed for their attorneys' fees. Also in the mid-1980s, Congress added an early intervention program known as Part H for infants and toddlers and their families.

In 1990, Congress amended the statute and crafted the statutory name used in this report —the Individuals with Disabilities Education Act, or IDEA. The regulations were correspondingly changed to reflect the statutory changes. Substantively, the 1990 changes were limited. Among the changes were the addition of separate categories for autism and traumatic brain injury, and the addition of transition services to the IEP requirements for children 16 years old and up, or younger if appropriate, who are preparing to leave school because of graduation or age.[21]

E. Reauthorization of IDEA 1997

Shortly after 1990, two issues fueled special education changes: inclusion of children with disabilities into regular classrooms, and school violence. In the late 1980s and early 1990s, several court decisions led to an increase in the integration or inclusion of children with disabilities into regular classes and schools.[22] These inclusion cases strongly affirmed the preference in the law for educating children with disabilities in regular classes with support services, alongside their nondisabled peers. Around this same time period, several notorious incidents of school violence occurred in various parts of the country. In response to the increased integration of children with disabilities into regular public schools and classrooms, some blamed these children for the increase in disruptive and violent behavior in schools, despite the lack of any data substantiating that they were involved in these incidents. A prominent teachers' union and school board organization subsequently lobbied Congress to revisit the issues of integration, disruption, and discipline. Some members of Congress responded by proposing substantial changes to IDEA during the process of reauthorizing the law in the early and mid-1990s. Parents and advocates for children with disabilities viewed these proposed changes very negatively and deeply resented what they considered the "scapegoating" of children with disabilities. To the credit of the current administration, both the President and the DoED continuously resisted pressure from members of Congress and powerful lobbying interests to compromise the intent of IDEA to ensure FAPE for every child.

Judith E. Heumann, Assistant Secretary of the Office of Special Education and Rehabilitative Services within the Department of Education (OSERS), made every effort to redirect the debate into positive change and improving results for children with disabilities. For several years, however, most of the debate in Congress continued to focus on the issue of discipline. Some members of Congress wanted to allow teachers and schools to exclude children simply for being "disruptive," whether or not the schools had adequately addressed the child's needs. Again, these proposals were viewed by parents as manifesting outright hostility toward children with disabilities and they vigorously opposed them. Special education for children with disabilities in adult prisons also became a controversial point in the congressional debates as some members of Congress sought to eliminate the right of incarcerated youth to receive special education services.

During the reauthorization, many parent leaders did not call for changes to IDEA, but rather for full implementation and enforcement of the law. In the view of many of these parents and advocates, the law itself needed no improving. Rather, widespread and pervasive noncompliance with the law needed to be corrected. Parents were highly critical of DoED and the state departments of education for failing to live up to their enforcement responsibilities.

In 1997, Congress finally reauthorized IDEA in the IDEA Amendments of 1997, Public Law 105-17 or IDEA '97, which President Clinton signed into law on June 4, 1997. This reauthorization launched the second generation of statutory development. For the first time since 1975, significant changes were made to the law while retaining its basic protections. The 1997 additions were intended to clarify, strengthen, and provide guidance on implementation of the law based on two decades of experience.[23]

The congressional statements prefacing the amended Act describe its new emphasis on educational results and improved quality of special education and regular programs and services:

> "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.
>
> [T]he implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.
>
> Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—
>
> > (A) ...ensuring their access in the general curriculum to the maximum extent possible;
> >
> > (B) strengthening the role of parents...;
> >
> > (C) coordinating this Act with other... service agenc[ies]... and... school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;...

> (D) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary [to teach them effectively]."[24]

In keeping with these articulated purposes, several important themes are woven throughout the new law:

- The LRE requirements are maintained and strengthened in many references to educating children with disabilities alongside children without disabilities.
- Children with disabilities must have an opportunity to be involved in and progress in the general curriculum. New IEP provisions reflect this emphasis.
- The rights of parents to be involved in educational decisions affecting their children—including eligibility and placement decisions—are reinforced and strengthened.
- Challenging behavior is best approached proactively through the use of functional behavioral assessments, and positive behavior strategies, interventions, and supports.
- Children with disabilities must be included in state- and districtwide assessment programs.
- There is a results-based approach to special education; the state must establish performance goals and indicators to measure and report progress.
- State and local agencies are to engage in systemwide capacity building, linking student progress with school improvement.

In the area of discipline, in the spirit of compromise, some changes were made to the law to give school officials greater flexibility in dealing with children with disabilities involved with weapons, drugs, and behavior that could cause serious injury. On the other hand, schools are directed in IDEA '97 more proactively to address challenging behavior problems rather than excluding or punishing children with disabilities because of misbehavior, especially misbehavior caused by their disabilities.

The years of controversy preceding reauthorization were marked by protracted and contentious debate, grassroots organizing, congressional hearings, and involvement by every conceivable "stakeholder." IDEA nevertheless survived an intense and prolonged period of bill introductions and amendments in the House and Senate, and of direct and active involvement of organizations representing teachers, parents, psychologists, related service providers, local and state boards of education, school administrators, and various other interest groups. Tools for enforcement were explicitly added to the law. The law that emerged from this process was, for the most part, strengthened and revitalized.

F. Statutory Framework for IDEA Enforcement

The overall purpose of IDEA is,

> "To assure that children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and..., to assist states, localities, educational service agencies, and federal agencies to provide for the education of all children with disabilities..."[25]

This section describes the overall compliance and enforcement mechanism, including the statutory roles of the DoED, the SEAs, and the LEAs. The informal role of parents as enforcers of IDEA in relation to the federal and state agencies is also discussed, as well as a brief overview of the history of federal enforcement action.

1. The Compliance/Enforcement Scheme for IDEA

The IDEA compliance/enforcement scheme was created to address both systemic and individual compliance problems. Activities take place in three separate arenas: (1) the Federal

Government, (2) the state government, and (3) the due process/judicial system. In the first arena, the Federal Government initiates action; in the second arena, it is the state government; and in the third arena, it is parents of students with disabilities. It should be noted that the compliance/ enforcement scheme for IDEA is different than that for other civil rights laws. The key difference is the lack of an individual federal complaint system under IDEA. Such a system is the key enforcement mechanism for other civil rights laws, such as the ADA and Section 504 of the Rehabilitation Act. The IDEA compliance/enforcement scheme is depicted in Table 1 below:

Table 1: The Three Prongs of the IDEA Compliance/Enforcement Scheme

1. Federal Government Role	2. State Government Role	3. Due Process/ Judicial Role for Parents
Approve/disapprove state eligibility documents	Ensure that IDEA requirements are met in the state	Procedural safeguards in law
Monitor states/issue reports detailing noncompliance	Determine eligibility of local education agencies (LEAs)	Mediation (if this option is chosen by complainant)
Provide technical assistance to states	Monitor LEAs for compliance	Impartial hearing
Develop and ensure implementation of Corrective Action Plans	Establish and maintain complaint system for parents	Appeal of hearing
Designate states as "high risk with special conditions" or require compliance agreements	Withhold funds from noncompliant LEAs	Civil action in court
Withhold funds (total or partial) from state for substantial noncompliance	Technical assistance to LEAs	
Refer state to Department of Justice for substantial noncompliance	Ensure qualified personnel, personnel standards, and comprehensive system for personnel development	Complaints to SEAs
Review complaints	Obtain corrective action plans from LEAs	
Collaborate with the Office for Civil Rights on 504/ADA/IDEA overlap	Designate LEAs as high risk subgrantees.	
Enter into compliance agreement with state	Audit LEAs for compliance.	

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1. Federal Government Role	2. State Government Role	3. Due Process/ Judicial Role for Parents
Cease and desist action		
Audit states for compliance		

Federal Government activities, the first prong of the compliance/enforcement scheme, are the focus of this study and will be described throughout the body of this report. State government activities, prong two, will be addressed only to the extent that the Federal Government monitors whether the state carries out these responsibilities. For example, in the section on federal monitoring, states are shown to be in or out of compliance with the general supervision requirements, indicating whether the state is carrying out its function of ensuring that LEAs comply with the law. The law gives states the responsibility for ensuring that IDEA's requirements are carried out in the states. In theory, the Federal Government is ensuring that the SEA is performing that function. Thus, the federal DoED is monitoring the SEA in much the same way that the SEA is monitoring the LEA.

This study does not attempt to discern the extent to which states withhold funds from LEAs. (Withholding of funds from LEAs, however, does come up in this report when it discusses the Federal Government's determination that an SEA is out of compliance because it is not withholding LEA funds.) Also beyond the scope of this study is an analysis of complaints received by states from parents. In fact, it is unclear as to whether such an analysis would be possible because states are not required to submit such information to DoED.

The third prong of compliance/enforcement, due process and use of the judicial system by parents and advocates, will not be addressed in this report, except in the context of federal monitoring to ensure that states are following the due process requirements of the law, such as notifying parents of their rights under the law and establishing an impartial hearing process. The due process/impartial hearing system is a vital component of the enforcement scheme, providing parents with specific procedural safeguards when disputes arise with school districts. This due process scheme has produced court cases that go on to address significant policy issues under

IDEA. The body of impartial hearing decisions in every state is not considered by this report. Furthermore, it is doubtful whether such a consideration could occur because data about these decisions exist only at the state level and are not compiled nationally. Furthermore, states vary in the extent to which they gather and analyze such information.

It is critical for the reader to keep in mind that all three prongs together constitute the overall compliance/enforcement scheme of IDEA, since only Federal Government activities are the focus of this report. An examination of all three prongs, which is beyond the scope of this study, is necessary for a complete picture of IDEA enforcement. However, state enforcement activities are touched upon indirectly in this report's analysis of the federal monitoring reports. The analysis provides a national picture of the variability of state compliance with IDEA (see Part III). The role of private litigation (third prong) is also briefly discussed in the context of its impact on state monitoring efforts (see Part V).

2. Background and Enforcement Philosophy

The Federal Government was always intended to play a critical role in monitoring and enforcing IDEA. The Bureau of Education for the Handicapped (BEH) within the Office of Education in the Department of Health, Education, and Welfare, was the first federal entity responsible for administering the law. When the law was passed in 1975, the Bureau was charged with monitoring the states' implementation of the Act while the states were charged with monitoring the local school districts' implementation of the Act.

Acknowledging that the Education for All Handicapped Children Act "represents the most important legislation for the handicapped ever passed" (1979 Annual Report to Congress—Introduction), the BEH had established a monitoring system by 1976. The monitoring system included a Program Administrative Review (PAR), or monitoring site visits. By 1978, every state had been visited at least once by BEH, and a few had been visited twice. BEH issued monitoring reports and worked with states, just as OSEP does today, to develop corrective action plans to address areas of noncompliance.

When the DoED was established in 1980, the Office of Special Education and Rehabilitative Services was created. OSERS was given the responsibility, which it retains today, for administering the law (now IDEA).

DoED has been monitoring states and states have been monitoring local education agencies since the mid-1970s as intended by law. As part of its responsibility for the administration of IDEA, DoED has been issuing monitoring reports that detail state noncompliance and deficiencies for more than 20 years.

IDEA is a unique law in that it is a blend of a civil rights law and a state grant program. The DoED administers both of these types of laws, but separately. Generally, the Office for Civil Rights (OCR) in the Department of Education administers the civil rights laws, as described below, but it does not administer IDEA. The other divisions of the DoED administer state grant programs, research programs, demonstration programs, teacher training programs, student loan programs, etc. Indeed, the core activity of the DoED is the administration of educational funds. Unlike some other agencies, such as the Equal Employment Opportunity Commission and the Department of Justice, its core activity is not civil rights enforcement. Civil rights enforcement is a secondary task of the DoED; its primary activities are programmatic.

Generally, the stakeholders for civil rights laws are quite different from the stakeholders for grant programs. The major stakeholders for civil rights laws are those protected by the laws and their advocates; in the case of IDEA, children with disabilities and their families and advocates. The major stakeholders for state grant programs are generally the recipients of the funds (state and local education agencies in the case of IDEA) and professionals who provide the services. Sometimes there is tension between these two groups, whose perspectives on the purpose of the law may be at odds, leaving the administering agency in the difficult position of being in the middle. While the state is the partner of the Federal Government in delivering educational services, it may also be the target of enforcement actions. Such an internal conflict is not present in the administration of most other civil rights laws, where the federal role is solely one of enforcing the rights of the protected group.

In recent years, OSEP has used the grant administration process as an informal means of civil rights enforcement. During 1990s, OSEP imposed "high risk status" on six states for failure to correct findings through federal monitoring of noncompliance with IDEA. Correcting the noncompliance was the "special condition" for continued eligibility to receive federal funding under IDEA for the next funding period. These informal actions eventually escalated to formal actions to withhold federal funds from two states that were persistently out of compliance.

These actions, taken against Virginia and Pennsylvania, were met with opposition from political leaders of those states. In the case of Virginia, when the DoED attempted to withhold funds because of noncompliance, the entire Virginia delegation and the governor wrote to the Secretary of Education requesting that he release the funds. In the case of Pennsylvania, four members of Congress requested that the Secretary reconsider his "high risk status" determination of the state and instead provide technical assistance. (See Appendix D for copies of the letters.) Secretary Riley did not withdraw the DoED's actions in response to the strong political pressure.

Concern about lax federal enforcement of IDEA, nonetheless, has been raised intermittently over the years. During the 1997 reauthorization of IDEA, many parents expressed strong doubts about the effectiveness of the monitoring process, calling for no change in the law and for full implementation and enforcement. Such concerns prompted Congress to clarify and restate enforcement authorities in IDEA '97. IDEA '97 explicitly authorized the Department of Education to refer noncompliant states to the Department of Justice.[26] OSEP also can withhold funds in whole or in part from states, based on the degree of noncompliance found.[27] (The former law was interpreted to preclude partial withholding of funds and allow only total withholding of funds, unless the noncompliance was limited to particular LEAs.) The House Committee Report accompanying IDEA '97 acknowledges these concerns and sets out a clear expectation that the Secretary will fully utilize these explicit authorities to enforce the law.

> "The Committee recognizes and fully expects that the Secretary will utilize the broad enforcement authority available for ensuring compliance with and implementation by state educational agencies....The Committee expects the Secretary to initiate actions to ensure enforcement, including the re-examination of current federal monitoring and compliance procedures to improve the implementation of the law, and a subsequent annual report to Congress, which evaluates the impact of the improved procedures on compliance. The Committee also expects that the Secretary's re-examination of current enforcement procedures will place strong emphasis on (1) including parents in the state monitoring process, (2) focusing monitoring efforts on the issues that are most critical to ensuring appropriate education to children with disabilities, and (3) timely follow-up to ensure that a state has taken appropriate actions to demonstrate compliance with the law."[28]

The final regulations restating DoED's enforcement options (referral to the Department of Justice and partial withholding of funds), became effective in May 1999, but DoED has developed no guidelines on specific conditions in which they should be used[29]

The organization of the DoED in carrying out its enforcement role is described in the following section.

3. The Federal Role - Delegation of Responsibilities

The Department of Education is headquartered in Washington, DC, where it employs approximately 3,600 people. In addition, DoED has 10 regional offices with 1,300 employees. Regional offices have no special education staff and thus no designated responsibility for IDEA monitoring or enforcement. They play a central role in the enforcement of Section 504 of the Rehabilitation Act, however, which prohibits discrimination against people with disabilities. All IDEA monitoring and enforcement functions are performed by Washington, DC, staff.

Appendix E presents the organizational structure of the Department of Education in Washington, DC. The boxes that have an asterisk represent the offices at the agency having IDEA-enforcement responsibilities. OSERS, also in Washington, is the principal office charged with implementing and carrying out IDEA and provisions concerning the education of children with disabilities.[30] Their roles and responsibilities are described below.

a. Office of the Secretary

The Secretary of Education holds ultimate authority and accountability in DoED for the implementation of all federal education laws. Under IDEA, the Secretary of Education ("Secretary") is responsible for issuing regulations,[31] allocating funds among the various states,[32] determining eligibility for funds,[33] and assessing the adequacy of eligibility documents demonstrating implementation of the statute (i.e., policy and procedure documents).[34] The Office of the Secretary is involved in all significant policy decisions related to IDEA and is informed of any developments related to IDEA that may become controversial.

Additionally, the Secretary is required to assess the progress in the implementation of IDEA, including the effectiveness of state and local efforts to provide a free appropriate public education to children with disabilities.[35] To underscore DoED's responsibility to monitor and enforce implementation of the Act, the law clarifies DoED's authority to invoke sanctions against noncompliant states. In general, whenever the Secretary finds:

> (A) "that there has been a failure by the state to comply substantially with any provisions of this part, or
>
> (B) that there is a failure to comply with any condition of an LEA's or state agency's eligibility... including the terms of any agreement to achieve compliance with this part within the time line specified in the agreement,

> (C) the Secretary *shall...* withhold, in whole or in part, any further payments to the state under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice."[36]

Withholding "in part" and referral to the Department of Justice were clarified in IDEA '97 as explicit enforcement options available to DoED in the event of noncompliance by the states.

In relation to the enforcement of IDEA, the Secretary's office becomes involved whenever an activity is above and beyond the routine. For example, whenever an enforcement action is taken, such as the initiation of a compliance agreement with a state or withholding of funds, the Secretary's office is involved. The Office of the Secretary has a very specific function in relation to withholding of funds. A state is entitled to request a hearing on a withholding of funds decision with a hearing officer, such as an Administrative Law Judge (ALJ) appointed by the Secretary. If the state is displeased with the decision of the ALJ, it may appeal to the Secretary for a final determination. Such an appeal has occurred only once in the history of IDEA enforcement—in July 1995 with the state of Virginia. (See Part IV below.)

b. Office of General Counsel and Relationship with the Department of Justice

The Office of General Counsel (OGC) provides legal advice to all divisions of the Department of Education, including those involved with the implementation of IDEA. Six divisions and one unit constitute the OGC. The Educational Equity and Research Division provides legal advice related to IDEA, all other programs administered by OSERS, other equity oriented programs (such as bilingual education) and laws administered by the Office for Civil Rights, including Section 504 of the Rehabilitation Act. The OGC has a staff of 113, of whom 86 are attorneys. Approximately 13 full-time equivalent (FTE) attorneys are assigned to the Educational Equity and Research Division. Of those, about four have responsibility for IDEA.

The OGC performs four main functions in relation to IDEA enforcement. First, it coordinates with OSEP in the review of all state applications for funding. Second, it reviews all state monitoring reports written by OSEP. Third, it supports OSEP on any enforcement actions related to IDEA, including determinations of "high risk" status for a state, developing compliance agreements with states, denial of funding applications, withholding of funds, and "cease and desist orders." (While the Department has the authority to utilize "cease and desist" orders to enforce IDEA, it has never done so.) Fourth, the OGC takes the lead in interacting with the Department of Justice on IDEA cases and issues.

The 1997 amendments to IDEA explicitly authorize the Department of Education to refer noncompliant states to the Department of Justice for investigation, litigation, or both. While the Department of Education has likely always had this authority, the 1997 amendments make such authority explicit and statutory.

The OGC, in conjunction with OSERS and OSEP, collaborates with the Department of Justice when IDEA matters are in federal court or the Supreme Court. When the state of Virginia took the Department of Education to court (see explanation of Virginia case below), the Department of Justice represented DoED. In some circumstances, the two agencies have worked together to write *amicus* briefs or to develop an argument in relation to a case or an issue. In consultation with the Department of Education, the Department of Justice considers cases that have been brought to its attention by the public (see Part VI below).

c. Office of Special Education and Rehabilitative Services

The Office of Special Education and Rehabilitative Services (OSERS), which will administer an $8.1 billion budget for FY '99, is the second largest office in the U.S. Department of Education. Only the Office of Postsecondary Education is larger. At a $5.3 billion FY '99 appropriation, IDEA is by far the largest of the programs administered by OSERS. OSERS employs a staff of 360[37] and is made up of three offices: the Rehabilitation Services Administration (RSA), the National Institute on Disability and Rehabilitation Research

(NIDRR), and the Office of Special Education Programs (OSEP). OSEP administers IDEA. NIDRR administers parts of the Vocational Rehabilitation Act and the Assistive Technology Act. RSA administers most of the Vocational Rehabilitation Act.

The vision and mission statements of OSERS articulate the organizational philosophy and outlook shaping its policies and activities. OSERS' vision statement expresses its overall purpose and how it intends to achieve that purpose: "OSERS will aggressively and collaboratively work to create a society in which all disabled people can obtain the knowledge and skills necessary to achieve the goals they set for themselves." The mission statement articulates OSERS' role in bringing about the vision: "The mission of OSERS is to provide leadership to achieve full integration and participation in society of people with disabilities by ensuring equal opportunity and access to and excellence in, education, employment, and community living."

The organizational role and functions of OSEP, the office primarily responsible for the day-to-day activities of administering IDEA, are described in the following section.

d. Office of Special Education Programs/Monitoring and State Improvement Planning Division

OSEP administers the $5.3 billion appropriated for programs authorized by IDEA.[38] Of this $5.3 billion, $4.1 billion funds the Part B Grants to States program. Between 1996 and 1998, this program has grown almost $2 billion, or 85 percent.

OSEP was reorganized in January 1998, and employed 120 staff at the time of the interview for this report. In addition to the Office of the Director (OD) and the Support Team, OSEP comprises two divisions: the Research to Practice Division (RTP) and the Monitoring and State Improvement Planning Division (MSIP). The OD coordinates all policy, provides leadership to OSEP's activities and to the field of special education, and is the home of the Federal Interagency Coordinating Council. The RTP division administers the discretionary programs authorized by IDEA. It is organized into four teams: Early Childhood; Elementary and Middle School; Secondary transition and Post-Secondary; and National Initiatives. The MSIP division carries out activities related to Part B and the preschool and early intervention formula grant programs of IDEA. MSIP is responsible for review and approval of state eligibility documents, monitoring the formula grant programs, and providing leadership in improving state structures and systems of education for infants, toddlers, children, and youth and their families.

MSIP has a staff of 45 organized into four units—the Office of the Division Director, Team A, Team B, and Team C. There are six individuals in the Office of the Division Director, 13 on Team A, 15 on Team B, and 11 on Team C. The Office of the Division Director has three key functions: (1) administer the State Program Improvement Grants (discretionary grants to states for systemic change activities related to improving performance of children with disabilities, education personnel development, and other initiatives related to meeting the requirements of IDEA), (2) develop policy in areas related to the division's activities, and (3) manage audit resolutions (including Inspector General (IG) audits and General Accounting Office (GAO) reports). In addition, the Office of the Director develops a chapter for the Annual Report to Congress, provides support for monitoring, and coordinates and collaborates with other relevant federal entities.

Not all of the people on each team participate in monitoring activities. Of the 39 individuals on teams, approximately 22 of them are monitors for the Part B state grant program. The smallest number of monitors employed at DoED in the past decade was nine.[39]

Each of the three Monitoring and State Improvement Planning Teams is responsible for a range of activities in 18 to 20 states and entities. The key responsibilities of these teams are to review state eligibility and recommend approval or disapproval for grant applications, monitor states, and provide or coordinate technical assistance for states. Monitors are assigned as the key state contact person for three to four states. Appendix F provides a detailed description of the responsibilities of the Monitoring and State Improvement Planning Teams.

e. Office for Civil Rights/U.S. Department of Education

The Office for Civil Rights (OCR) in the Department of Education has no responsibility for enforcing or monitoring IDEA. The nature of its authorities, however, as described below, leads it to be involved in issues that are also IDEA issues. OCR was included in this study because complaints and issues brought to OCR may at times overlap with those raised under IDEA.

The Office for Civil Rights is charged with enforcing federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. Two of those laws prohibit discrimination on the basis of disability—Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). Section 504 prohibits disability discrimination by any recipient of federal funds, such as local school districts. Title II of the ADA prohibits disability discrimination by public entities including public school districts, public colleges and universities, public vocational schools, and public libraries, whether they receive federal funds or not. Most of OCR's enforcement activities take place in the 12 regional offices throughout the country.

OCR carries out its responsibilities in two primary ways—by responding to complaints and conducting compliance reviews. OCR receives about 5,400 complaints per year. More than half of these are Section 504/ADA complaints (see discussion on Complaint Handling in Part IV for an analysis of these complaints, which may overlap with IDEA). OCR works with the involved parties to resolve complaints. OCR may initiate compliance reviews, which allows it to target resources on compliance problems that appear acute, national in scope, or newly emerging. An advantage of a compliance review is that it may result in policy or program changes that benefit large numbers of students, whereas an individual complaint may benefit only the complaining party. OCR has the authority to withhold federal funds from entities, such as local school systems, found to be violating Section 504.

OCR has conducted compliance reviews on minority students in special education, and has provided technical assistance under Section 504 and Title II of ADA regarding discipline of students with disabilities. In addition to providing technical assistance on making FAPE available to students with disabilities in correctional facilities, OCR and OSEP have collaborated on cases involving students with disabilities in correctional institutions.[40]

The potential overlap in authorities between OCR and OSERS has long been acknowledged by both offices. Because of concerns about lack of coordination and potential duplication of efforts, OCR and OSERS developed a Memorandum of Understanding (MOU) in 1987.[41] The MOU outlined how the two offices will share information about potential 504/IDEA violations. Processes for joint review of eligibility documents and complaints were outlined. Joint activities, including investigation of education agencies, issuance of findings, negotiation of remedies for violations found, monitoring of compliance plans, and enforcement proceedings were authorized. Since the MOU, OCR and OSERS have carried out some of these authorized activities in New York, Mississippi, Nevada, the Virgin Islands, Arizona, and Florida.[42] OCR and OSEP appear to be developing an increasingly productive relationship as well based on coordination and collaboration. OCR and OSEP have drafted joint letters about overlapping issues. OCR reported that it provides OSEP with its compliance monitoring docket for the year so OSEP will know what school districts OCR is investigating and why.[43] OSERS reported that as part of its pre-site monitoring activities, it requested Section 504 agreements from OCR for a particular state. OCR reported coordinating with OSEP on disability cases and meeting with OSEP quarterly to share information about the respective offices' activities. Both offices have conducted training for staff in the other's office.[44]

f. Office of the Inspector General

The Office of the Inspector General (OIG) is charged with reviewing audits performed by states to ensure that their expenditure of Part B IDEA state grant funds is consistent with the requirements of the law. OIG also investigates allegations of waste, fraud, and abuse, and can independently audit states to verify that federal funds have been used appropriately. Such independent audits have uncovered instances of abuse resulting in repayment by the state of all misappropriated or misspent funds. In 1991, OIG challenged the child count submitted by Pennsylvania in December 1990. Ultimately, DoED and Pennsylvania agreed that the child count should be adjusted downward from 195,607 to 190,771. As a consequence, Pennsylvania's Part B award, on or about July 1, 1991, was adjusted downward by $1,928,016.[45]

4. State Education Agencies (SEAs)

Within the states, Congress placed the ultimate responsibility for reaching the goal of making FAPE available for each child with a disability with the state educational agency, stating that "the state educational agency is responsible for ensuring that:

(i) the requirements of this subchapter are met; and

(ii) all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency—

  (I) are under the general supervision of individuals in the state who are responsible for educational programs for children with disabilities; and

  (II) meet the educational standards of the state educational agency."[46]

To be eligible for federal funds to assist with the education of children with disabilities the SEA must submit documentation to the U.S. Department of Education for approval, detailing the state's policies and procedures assuring compliance. Once approved, new submissions to DoED are required only when changes to a state or federal law, policy, or procedure impact the approved policies and procedures. In part, these documents must demonstrate the state's assurance that:

> "[A] free appropriate public education is available to all children with disabilities residing in the state between ages three and 21, inclusive..."[47]
>
> "To the maximum extent appropriate, children with disabilities... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[48]
>
> "Children with disabilities and their parents are afforded the procedural safeguards required by Section 1415 of this [Act]."[49]

Additionally, the SEA's eligibility documents must show (1) that funds received under IDEA will be expended in accordance with provisions of the Act;[50] (2) that the state has a comprehensive system of personnel development designed to ensure an adequate supply of qualified special education, regular education, and related services personnel,[51] how the state acquires and disseminates to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational sources,[52] and how the state, where appropriate, adopts promising educational practices, materials, and technology;[53] and (3) that the SEA regularly evaluates the effectiveness of IDEA programs and services in meeting the educational needs of children with disabilities.[54]

5. Local Education Agencies (LEAs)

In order to receive IDEA funding from the SEA, a local education agency must demonstrate eligibility to the SEA.[55] The LEA is required to provide assurance to the SEA that policies and procedures are established and administered in accordance with the SEA's responsibilities outlined in the law.[56] Thus, an LEA, as a recipient of federal funds, must provide assurance that all children with disabilities residing within its jurisdiction will be identified, located, and evaluated for special education and related services and that all children in the district are provided FAPE in the LRE.[57]

In the event that an LEA fails to comply with IDEA requirements, the SEA "shall reduce or not provide further payments to the LEA... until the SEA is satisfied that the LEA... is complying with that requirement."[58] Furthermore, if the SEA determines that the LEA is "unable to establish and maintain programs of free appropriate public education that meet the requirements of the Act," it must use the funds that would otherwise go to the LEA to provide the necessary services directly to the children with disabilities.[59]

IDEA's implementing regulations also require SEAs to adopt procedures for filing, investigating and resolving complaints, including a determination of whether IDEA requirements were violated and procedures for ensuring effective implementation of the SEA's final written decision.[60]

6. The Unofficial Role of Parents as Enforcers of IDEA

Under IDEA, parents have a private right of action, or right to go to court, to enforce their children's rights under the statute. However, because of the individualized nature of the law and the requirement that parents exhaust administrative remedies before a court can review an alleged failure to provide FAPE, it is sometimes difficult to address systemic problems through individual litigation. Nevertheless, litigation brought by parents has become a critical enforcement mechanism through judicial interpretations of the law and in relief obtained through class actions to redress systemic problems. As detailed in Part V, recent cases in three states have directly challenged those states' monitoring deficiencies and other systemic problems.

G. A Brief Overview of Federal Enforcement Action

In the 25-year history of IDEA, the use of formal enforcement actions involving sanctions to address state failures to ensure compliance with IDEA has been very limited. Since June, 1997, when Congress clarified the enforcement options of permitting partial withholding of federal funds or referral to the Department of Justice, the Department of Education has used neither of these options. The Department of Education has exercised its authority only once to withhold IDEA funds to address noncompliance by a state (Virginia 1996). The issue in the Virginia case was the state's policy permitting cessation of all educational services for children with disabilities who were suspended or expelled. OSEP policy was that cessation of services is not permitted under IDEA. Cessation of services means that students no longer receive any education or related services from the education system, not even home instruction.[61]

The U.S. Secretary of Education ruled that Virginia's entire annual IDEA grant—$60 million—could be withheld based on the state's refusal to provide FAPE to suspended or expelled children. Virginia appealed the Secretary's decision in federal court. The Fourth Circuit Panel agreed with OSEP that Virginia's policy was in violation of IDEA. Virginia appealed this ruling to the full Fourth Circuit Court of Appeals sitting *en banc*, which reversed the circuit court panel decision on this issue. Virginia permanently lost this debate, however, when Congress subsequently amended IDEA with a "no cessation of services" provision that ensures school districts provide FAPE to children with disabilities even during suspension or after expulsion.[62]

OSEP has more often used informal mechanisms to secure changes in state operations through negotiations over the approval of state policy and procedures documentation. For example, in 1980, OSEP's predecessor, the Bureau of Education for the Handicapped (BEH), delayed plan approval in California because policies and procedures regarding occupational therapy and physical therapy related services and the state's complaint process failed to comply with the law. This delay was spurred on by an organized grassroots parent complaint strategy in California. As a result, California's Department of Education made substantial changes in the noncompliant areas.

More recently, as discussed later in this report, OSEP made determinations of high risk status or applied requirements for compliance agreements to six different states/entities. In order to address persistent noncompliance with Part B of IDEA, Puerto Rico was and California, New Jersey, Pennsylvania, the Virgin Islands, and the District of Columbia now are under such scrutiny. With the exception of Puerto Rico, these informal enforcement actions are recent. The compliance agreement entered into by Puerto Rico appears to have had some effect in correcting conditions of noncompliance. At the time of this writing, it is too soon to tell how effective the other compliance agreements will be in compelling compliance.

H. Findings and Recommendations

Finding # I.1

The effectiveness of DoED's internal coordination among the various offices and teams involved in IDEA implementation and enforcement is unclear.

OSEP is responsible for IDEA compliance monitoring and enforcement consulting with several other offices within the Department of Education as needed. Within OSEP, the close integration of enforcement responsibility with responsibilities for state grant administration, compliance monitoring, technical assistance, and program improvement can lead to conflicting internal objectives. There appears to be no process for assessing whether the current approach to internal collaboration has helped or hindered IDEA enforcement.

Recommendation # I.1

The Department of Education should assess whether its current internal organization and division of IDEA grant administration and enforcement functions/responsibilities effectively supports the Department's goals to correct persistent state noncompliance.

OSEP, OCR, and perhaps OGC should further articulate the objectives of their joint activities in relation to the enforcement of IDEA, Section 504, and Title II of ADA and describe the specific mechanisms and divisions of responsibility they have developed to implement each objective. In addition, OSEP and OCR should evaluate the effectiveness of their current collaboration for improving compliance monitoring and enforcement of IDEA.

Finding # I.2

The Department of Education's mechanisms for external coordination and collaboration to better implement and enforce IDEA need to be evaluated.

Recommendation # I.2

The Department of Education should also articulate the objectives and mechanisms for collaborating with other government agencies (i.e., the Department of Justice and the Department of the Interior) on the enforcement of IDEA and evaluate their effectiveness on an ongoing basis. At least every two years, DoED's annual report to Congress should report on the effectiveness of these mechanisms and the agencies' progress toward meeting their collaboration objectives.

Part II presents the experiences and perspectives of some students with disabilities, parents, and advocates in their struggle to realize the promises of the law.

II. Grassroots Perspectives on Noncompliance and Federal Enforcement of IDEA

A. Obstacles Experienced by Students with Disabilities and Their Families

Almost a quarter century following the passage of the Individuals with Disabilities Act (IDEA), students with disabilities and their families still commonly face obstacles to securing the free appropriate public education (FAPE) that the law promises. The impact of noncompliance with IDEA is difficult to overestimate. Every Parent Training and Information (PTI) center in the country hears daily about the toll taken on students whose educational and related services needs are not being met and on the parents who expend incredible amounts of energy advocating for basic access to educational programs for their children. Appendix B provides a general list of the obstacles faced by students with disabilities and their families that were intended to be addressed by IDEA. Problems in all of these areas persist today.

The experience of many parents gives the impression that compliance with the law is the exception rather than the rule. Parents frequently face repeated challenges year after year, sometimes throughout the entire elementary and secondary educational experience of the child. The stress of working with a recalcitrant school system that appears to not want to work with a parent to educate a disabled child can be tremendous. The recent controversy over the discipline provisions in IDEA has fueled special education cases related to suspension and expulsion of students.

The following situations are examples of what many students and families in this country experience when working with special education systems. These experiences demonstrate that even the most basic promises of the law are too often not being met.

1. Noncompliance with Least Restrictive Environment

In California, a first-grade student with significant mental impairments was placed in the regular classroom for the full day. The school district thought that the placement was wrong for the student and claimed that she was not receiving academic benefit from her placement. In addition, the district held that the girl's presence had a detrimental effect on her teacher and classmates. A hearing officer determined that the regular classroom was indeed the correct placement for the girl and outlined appropriate supports that had to be provided. The school district appealed the decision. Eventually the girl's family moved to a neighboring district and enrolled the child in a regular education class there, where she is doing well.[63]

In another situation, in Indiana, a student who is blind sought to attend his local school. The school district required the child to travel 25 miles away from home to a residential school for the blind to receive the educational services he needed. A hearing officer determined that the child must be served in his home school, which is the least restrictive environment. The school district has appealed the ruling.[64]

In New Jersey, a very bright elementary-age child with dyslexia was in a resource room several periods a day. In more than two years she had not shown progress in reading. Her parents sought training for the teachers on how to best instruct children with dyslexia in reading. The school system responded by seeking to place the child in a self-contained classroom. The school contended that it teaches all children to read by the same method. The parents prevailed in court and were awarded instructional compensation for the child over the summer.[65]

These situations, all related to the "least restrictive environment" mandate, persist case after case and year after year despite repeated rulings for integrated placements. In one of the best known cases, Rachel Holland and her family spent five years fighting in court for her right to be educated in a regular classroom. The school district in California insisted that Rachel, then a seven-year-old girl with mental retardation, be educated in a separate special education classroom. Her parents held that she should be educated in a regular classroom with support. In 1992, the district court ordered an aide and special education consultant to work part-time with Rachel's teacher and held that she should be placed in a regular classroom. The school district appealed this decision all the way to the Supreme Court, which declined to hear the case, thus affirming the lower court's decision. Rachel and her parents were engaged in pursuing their child's right to an integrated education for more than five years. For two of those years, they were in a position of defending against appeals by the school system. During the pendency of the case, the Hollands placed Rachel in a regular private school, at their own expense, where she was in a regular classroom with supports. She continues to thrive today in a regular public education classroom.[66]

2. Noncompliance with Free Appropriate Public Education

A special education student in East Palo Alto, California, Empris Carter, is not receiving the education and related services she requires. She and her family are embroiled in a lawsuit with the school district over her services. She may be speaking for many of the nation's special education students as she reflects on her situation as follows:

> Early in the game I discovered that many of my teachers felt that I was a nice, respectful, and intelligent young girl. However, they had some doubts about my capabilities and immediately began to label and set limits on my future role in society. Instead of helping me to find ways to learn, they moved me to a special class where kids were not expected to learn. I would get angry about their doubts and my self-esteem was low. My mother would fight back with encouraging words and my self-esteem would rise again. After being encouraged by mother's words, I again realized that I am the key person in my future.
>
> Learning comes easy for some and is more difficult for others. Education plays a major role in everyone's future. I, Empris Carter, have a

> place in the future. In order for me to function properly and be able to contribute something positive to our society, I, too, must have the opportunity to receive the best education possible.[67]

Saundra Lemmons, a 17-year-old high school student and basketball champion in Washington, DC, told her story to politicians in February 1999.[68] Lemmons was misdiagnosed as mentally retarded in the first grade and for years was improperly placed. While she has language processing problems, she never received speech and language therapy. Teachers allowed her to pass from grade to grade as "a gift." Finally, during the 1998–99 school year, Lemmons began receiving speech and language therapy. She hopes to play basketball in college, but fears that her low academic skills will prevent her from succeeding in life. After 12 years in special education, she has reached only a fourth-grade reading level. "The school system has not given me what I needed," she said. "I feel as though no one really cares. If they did care, I would be reading a lot better," she added.

Cases related to suspension and expulsion are increasing. In New Jersey, a middle school student was receiving special education because of multiple disabilities, including behavior problems. After an incident in the classroom where the child threw something (not harming anyone) and tipped over a chair, the child was suspended and then expelled and placed on home instruction. The child is currently in a self-contained setting in a different school district. The child did not have a behavioral plan as part of his Individualized Education Program (IEP), nor has he had a functional behavioral assessment.[69] In Delaware, parents successfully challenged a school district's failure to provide special education services to students with disabilities who are expelled.[70]

Parents have a reasonable expectation that the federal and state agencies charged with monitoring and enforcement will do their jobs. But as these cases demonstrate, parents throughout the country cannot be sure that the rights of their children are protected in school districts and states. Noncompliance in many states is still too common, even after more than two decades of implementation.

The following section discusses the experiences of parents and others in their roles as advocates in obtaining services and supports under IDEA for children with disabilities.

B. Advocacy Perspectives

1. Parent Advocates Working with PTI Centers

This section highlights major themes and concerns raised by 14 parents of children with disabilities from nine states who were specifically interviewed for this study. A number of these parents were also directors of Parent Training and Information centers in their states. They were chosen because of their active involvement with and knowledge about federal monitoring and enforcement of IDEA in their states before 1999 and because they represented a geographic range of states. The parents interviewed were from California, Florida, Illinois, New Mexico, New York, North Carolina, Pennsylvania, Texas, and Vermont. The National Council on Disability (NCD) made connections with most parents through the network of PTIs across the country. While this was clearly not a representative sample of parents, their insights offered a valuable perspective on the monitoring and enforcement of IDEA. Because several of these parents expressed concern about having their identities disclosed in the report, NCD has chosen not to attribute remarks to individual parents.

Their concerns were echoed by many of the parents and others who attended the NCD-sponsored Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act sponsored by NCD in Washington, DC, on September 22, 1999. Their comments are highlighted to underscore concerns raised throughout this section.

a. Parental Involvement and Communication with OSEP

Most of the parents interviewed commended the current administration of OSEP for their concerted effort to solicit information and input from parents. They cited improved coordination and collaboration with OSEP monitors in recent years, and appreciated the opportunity to contribute to the monitoring process. This sentiment, however, was not shared by all parents. Several parents, especially those at the NCD Town Meeting, expressed continued frustration over OSEP's failure to facilitate parental input and participation.

> ***"Parents are disenfranchised. .... with minority parents, particularly, the information is not disseminated. We have not been included certainly in the monitoring process in Texas. And I'm just wondering what kind of effort is going to be made to include those really, truly minority grassroots programs and parents working in these communities, and visible to the school districts. They know who we are. We're not getting the information, so it needs to come from maybe another source other than the school district."*** **- Parent from Texas on the failure to involve parents, especially in minority communities, in monitoring IDEA**[71]

Other barriers to meaningful parental involvement in the monitoring process cited included the following:

* Approximately one-half of the parents interviewed said that notification of public meetings came too late for them to notify and organize other parents to testify. These parents would like to be notified several months in advance of the meeting.

> ***".....in the state of Maryland, we were not notified of the meeting. ...The only parents that showed up were the ones that found out secondhand."*** **- a parent from Maryland on the invitation to public participation in the monitoring process**[72]

- Three parents specifically mentioned that the presence of district representatives instructed to take notes at the public meetings heightened fears that school districts would retaliate against their children. Several of the PTI directors underscored this admission by commenting on parents in their states who were reluctant to testify at the meetings for fear of retaliation.

- Parents from the rural areas said that the burden of traveling to the meetings can be prohibitive and expressed frustration that their school districts are commonly overlooked in the monitoring process.

- The PTI directors reported that many of the parents in their states were frustrated that monitoring has not led to more comprehensive enforcement of IDEA or improvement in the education of their children, and therefore believed that it was a waste of time to testify at the public meetings.

b. Monitoring reports

i. Acquisition of reports

Our interviews found that the distribution of final monitoring reports to parent advocates was highly inconsistent. Some of the PTI directors interviewed said that they never received a copy of the monitoring reports, which contributed to their feelings of being excluded from the monitoring process and deprived of feedback. Those who did receive the reports commended OSEP for their improved speed of publishing and disseminating copies to parent and advocacy organizations.

ii. Quality of reports

Of the parents who did receive the monitoring reports, many found them useful in holding their states accountable and pressuring them to improve compliance. One parent, however, criticized the reports as "poorly written, giving SEAs and LEAs room to discredit the reports and the federal monitoring." She explained that the findings of the reports are presented in a way that they "appear anecdotal and are easily dismissed by states and districts." She was further concerned that the organization of the monitoring reports and data were not standardized. From her perspective, a standardized approach to presenting data in the reports would allow a comparison of basic findings on the same requirements for the same and different states, as well as a comprehensive national picture of IDEA compliance, to emerge over time. The current method of presenting data in different formats from one monitoring cycle to the next undermines the credibility and impact of the monitoring findings.

c. Evaluating the Monitoring Process and Corrective Action

i. "Just going through the motions"

Without exception, the parents felt that there was no clear nexus between monitoring and enforcement. One parent from Illinois commented:

> ***"OSEP monitors did paint a very accurate picture of what was going on [in the state]. But, that's where it broke down. The same districts are cited for the same violations year after year, and there are no consequences for noncompliance, no incentives to do good."***

This concern over the apparent lack of consequences and enforcement as a result of the monitoring process was undeniably the strongest and most common concern expressed by parent advocates who were interviewed.

> ***"I've turned green when somebody says we're going to do technical assistance [to remedy noncompliance]. For 24 years this has been the law. How much technical assistance do we do? What does it take until you get it? Our kids are only in school until 21 but we've got 24 years of technical assistance. Come on, guys. I want to see accountability. You deliver the mail or you don't get the***

***money!"* - parent from Florida on the minimal impact of technical assistance on correcting noncompliance in her state**[73]

ii. An unrepresentative picture of compliance in rural and larger states

The PTI directors from larger or more rural states were concerned that the design of the monitoring process, which relies on snapshots of circumstances in a handful of schools and districts to get a representative picture of the whole state, was less effective in soliciting input from stakeholders or getting an accurate picture of special education in their districts and states, and overlooked many rural districts.

iii. Tension between federal law and state autonomy

Parents in a number of states felt that school administrators in their states and districts were hostile to IDEA and didn't take it seriously. One parent advocate from California explained that "simply by being there and throwing their weight around, [the federal monitors] promote change." Other parents felt that the monitoring visit was beneficial because it provided a model of effective monitoring procedures for SEAs. They expressed the need for OSEP to convey the seriousness of monitoring and compliance to the local districts.

> ***"Noncompliance occurs at the school site level, at the district level, and at the state level, and if all levels are not monitoring and ensuring, it cannot fall on the backs of parents to remedy. You have to take out some of those states or districts and then start setting an example."* - Parent from California on the need for DoED to change its heavy reliance on parent enforcement of IDEA**[74]

iv. The need for ongoing, targeted monitoring

Several of the PTI directors were concerned that the four-year cycle employed by OSEP failed to direct the monitoring process and resources appropriately. They suggested that it be supplemented with, or replaced by, more ongoing and "target-driven" monitoring, an approach OSEP is attempting to implement in its new monitoring system. In their view, if a state is failing to ensure compliance with the law, OSEP must continue to monitor it, applying pressure and offering assistance until compliance is achieved. Along these lines, parents favored ongoing monitoring, technical assistance, and follow-up visits. One parent explained, "The federal monitors come in and say that a state or district is doing it wrong and then they leave without providing real support or follow-up. These states and districts need more guidance in implementing an enforcement plan."

One parent suggested, "We need incentives for those who are doing it right and have promising practices, and ongoing technical assistance for those who aren't."

d. Corrective Action Plans

All of the parents NCD spoke to reported that there was little or no parental involvement in the corrective action plans (CAPs). One parent expressed concern that because *every* state has a CAP, its potential for facilitating compliance may be significantly limited. She explained that when her state is confronted with a report showing noncompliance, "the first question that the state asks is how many other states are out of compliance. When the answer is all of them, it seriously weakens the ... incentive to do something about it."

e. The Need to Create Consequences

Most of the parents were extremely frustrated by the lack of enforcement and skeptical as to when they would see full implementation and enforcement of the law. Several have urged OSEP to find a way to create sanctions that would improve accountability and compliance. At the same time, however, they were conflicted over whether to withhold funds. Some parents felt that it was crucial that OSEP exercise this enforcement mechanism and put some power behind the law, while others feared that this would only harm the students that IDEA is meant to serve.

They clearly expressed their sense of urgency about the need to follow through:

"Currently there are no administrative standards or accountability. Monitoring is okay, but how do we take it to the next step? We've got to hit them in the pocketbook. There are consequences of noncompliance for our kids, and there should be consequences for the districts."

"There is no enforcement, no teeth. It's like making the speed limit on the highway 55 mph but taking away all of the police. Why do we have laws if no one is going to follow them?"

"It's a good law, make it work!"

f. Monitoring at the State Level

There was widespread agreement that effective monitoring at the state level has been hindered by state reform initiatives and budgetary cutbacks that leave SEAs with a lack of staff and resources to perform adequate monitoring of local districts. A number of parents felt that the Federal Government needs to convey the importance of monitoring and enforcement to the state and local leaders and provide technical assistance to increase compliance. A handful of parents reported that their states conducted partial monitoring of districts that had received an unusual number of complaints and suggested that OSEP institute this practice on the federal level.

> ***"Our constituency [children with disabilities] is not a strong constituency. It is not sexy to be for us. ....Teachers get their marching orders from principals, who get their marching orders from boards of education who respond to state legislatures...... It's got to be okay for a teacher to say okay, I will take a risk. For a principal to say, I'll take a risk..... If the state legislatures and the governors do not take that kind of stand, I'm sorry, folks, it's not going to happen. It hasn't happened in 20 years and it's not going to happen now. .. So, ..it is a political reality of [OSEP] approaching a legislature, of approaching governors and saying, 'Hey, guys, unless you give real credence to what we're doing, this is not going to happen no matter how many millions of dollars we filter down to you."*- Parent from Florida on the need for OSEP to educate state legislatures about persistent noncompliance and its impact**[75]

In recognition that the IDEA amendments of 1997 will require a concerted effort to fully implement the law and enable federal and state monitoring to truly achieve full compliance, the National Parent Network on Disabilities (NPND) (an organization that comprises Parent Training and Information centers around the country) has recommended the establishment of a "People's Monitoring and Compliance Project." This proposed project to promote greater grassroots involvement in monitoring would gather information about the status of monitoring, develop a report, transmit it to the Congress and the Administration, request oversight hearings in the Congress, request that the Secretary of Education set up a monitoring committee to report to him or her, and establish and convene a legal advocacy group. This project is still under development at NPND.[76]

2. Other Parent Advocates

Some parents report situations of systemic noncompliance. In Georgia, Linda Sheppard, the executive director of Parents Educating Parents and Professionals, reports that at least three counties in the state outright refuse to serve students with learning disabilities under IDEA. She notes that despite repeated complaints, school districts take the attitude of "go ahead and try to make me" serve learning disabled students. Sheppard also notes that this deficiency was cited in a federal monitoring report; however, it took the state two years to respond to the report because extensions continued to be granted. According to Sheppard, this lack of service to learning disabled students has persisted for at least five years and is growing worse. One result is students with learning disabilities are not learning to read, are becoming frustrated, and are increasingly dropping out of school.

Another concern cited by Sheppard is the racial discrimination faced by students with disabilities in southern Georgia. She notes that children who are African-American in south Georgia are too frequently labeled as behavior disordered or mentally retarded and then served in separate settings. There is one program that serves three- and four-year-old African-American children in a separate setting, she notes.[77] Reports from New Jersey also indicate that students with disabilities who are racial minorities are more likely to be in separate settings than those who are not racial minorities.[78]

3. Advocates for Children in the Juvenile Justice System, Minority and Rural Communities

In addition to the testimony of parents, special education advocates attest that inappropriate placement in separate settings and a lack of services for children with disabilities served in regular classrooms persist in many areas. Testimony of parents at public hearings, consultation with special education advocates serving rural, Native American, and other minority communities around the country, as well as studies by various government and advocacy organizations indicate that minority students are disproportionately represented in separate educational settings.[79]

> ***"...there is a very big need on our reservation to have monitoring of our school districts. We've made it very clear to them that we have a need, that there are problems in our education system, and our children are not getting IDEA implemented there. And we're told by our district people that 'yes, we agree there is a problem.' Well, where do we go after we get the acknowledgment and there's nothing done about it?"*** **- a Native American parent from Montana**[80]

Other studies find that minority children are over-represented in institutions such as detention and correctional facilities where access to appropriate educational services is inadequate to nonexistent. That is especially problematic considering that 40 percent of youth held in detention are estimated to have some form of learning disability.[81]

The students whose stories and situations discussed above are just a few among many whose special education needs were not or are not now being met in their state educational systems.

C. Findings and Recommendations

Finding # II.1A

The ongoing struggles of many students with disabilities, their parents, and advocates to obtain services under IDEA leaves them with the impression that the Federal Government is not enforcing the law effectively.

Finding # II.1B

As a result of 25 years of nonenforcement by the Federal Government, parents are still a main enforcement vehicle for ensuring compliance with IDEA.

Recommendation # II.1A

The Department of Education must exercise leadership in enforcing the law, with parents as partners and resources in carrying out their enforcement mandate.

Recommendation # II.1B

The Department of Education should publicly articulate and implement an enforcement philosophy and plan that includes the strategic use of litigation and administrative sanctions.

When noncompliance is not corrected within the agreed upon time frame, the Department of Education should aggressively enforce the law, using clearly defined appropriate sanctions to improve accountability and achieve compliance with the law.

Finding # II.2

Parents have identified a number of obstacles to their participation as full partners in the IDEA monitoring and enforcement processes:

- **Parents have not been invited consistently to be involved in the monitoring process, and, if invited, have not consistently been given an opportunity to be heard.**

- **Parents are not knowledgeable enough about either the requirements of IDEA or the monitoring and enforcement processes.**
- **The presentation of compliance information in the monitoring reports is inconsistent from one monitoring period to the next, making evaluation of improvements over time difficult.**

The recommendations below address how some of these obstacles can be corrected.

Recommendation # II.2A

OSEP should encourage the involvement of students with disabilities and their parents as resources to improve monitoring.

Parents stressed that they and their children have the "frontline" experience and expertise with the districts in their states and would like increased involvement in directing the monitoring process and resources to areas of noncompliance that they have already identified.

Recommendation # II.2B

Congress should direct a change in the mission of the Protection and Advocacy (P&A) systems and IL centers to include a priority focus on special education advocacy, and in collaboration with the PTIs, the development of a collaborative special education advocacy strategy for their states.

The combined resources of PTIs, P&As, and IL centers are needed to develop and maintain special education advocacy services and programs statewide at a level commensurate with the need of students with disabilities and their parents for assistance in obtaining services and supports under IDEA, as well as participating effectively in monitoring and enforcement.

Recommendation # II.2C

OSEP should standardize the presentation of the monitoring reports and data.

Such standardization is essential for accurate and credible evaluation of compliance from one monitoring period to the next.

Part III provides a more in-depth description and analysis of DoED's roles and responsibilities vis-a-vis the implementation and enforcement of IDEA.

III. Grant Administration, Compliance Monitoring, Complaint Handling, and Enforcement Functions

The legal authority for the Department of Education (DoED) to ensure compliance with the Individuals with Disabilities Education Act (IDEA) is found in provisions of the statute itself that authorize assessment of policy and procedure documents to determine state eligibility for funding,[82] referral of a state to the Department of Justice, and withholding funds when a state has failed to comply substantially with any provision of Part B of IDEA.[83]

The key activities that the Office of Special Education Programs (OSEP) carries out in relation to monitoring state compliance with the law are (1) determining state eligibility for federal grants under IDEA, (2) conducting on-site monitoring visits and issuing monitoring reports, (3) developing corrective action plans and overseeing the implementation of those corrective actions ordered by OSEP, and (4) initiating enforcement action. This part discusses these core federal functions of IDEA implementation oversight.

A. Grant Administration

1. The Basic State Grant Program

IDEA '97 requires the states to submit applications that ensure "to the satisfaction of the Secretary" that they have policies and procedures that meet the conditions of federal law.[84] These conditions include (1) access to a free appropriate public education (FAPE), (2) individualized education programs (IEP), (3) least restrictive environment (LRE), (4) procedural safeguards, (5) evaluations, (6) general supervision by the state education agency (SEA), (7) a comprehensive system of personnel development, (8) personnel standards, (9) performance goals and indicators, and (10) participation in assessments.[85] Before the enactment of IDEA '97, a state plan was submitted to OSEP every three years to determine eligibility. States were required to submit assurances that they were complying with the various requirements during the three-year interim period. IDEA '97 no longer specifically requires a state plan, and one submission of policies and procedures information, if accepted, remains in effect indefinitely. Modification of a state eligibility document may be required if (1) the state determines that a modification is required, perhaps because of changes in state law or regulations; (2) there is a change in IDEA by amendment or a new interpretation of IDEA by a federal court or a state's highest court; or (3) there is an official finding of noncompliance with federal law or regulations. When the Federal Government requires a modification of the application, it need only be to the extent necessary to ensure the states' compliance with the part of the law that is newly amended, interpreted, or out of compliance, not the entire law or larger portions of the law.[86]

For FY 1997, OSEP did not require states to submit a detailed application, as the reauthorization of IDEA was imminent and significant changes in the law were anticipated. OSEP thought it would be prudent to wait until the new law was enacted. The reauthorization was not complete until June 1997, and the regulations to implement the new law were not finalized until March 12, 1999. Thus, since 1997, OSEP has allowed states to receive their funding by signing assurances that they would comply with existing federal law. In 1997, after the law was reauthorized, OSEP sent all states a packet explaining the requirements of IDEA '97. Beginning in 1998, OSEP gave states the option of submitting an application or signing a statement of assurances. One state, Wisconsin, submitted an application, which was approved. All of the other states have signed and submitted assurance statements to OSEP for fiscal years '97–'98, '98–'99 and '99–'00.[87]

OSEP generally notified the states of information that would be due about three months prior to the actual due date. Every state had to allow a 60-day public review period for the eligibility documents prior to submitting them to OSEP. States could publish notices of availability in newspapers, distribute them in libraries, etc. The due date to the Federal Government was generally April 1 or May 1. OSEP took two to three months to review the documents and generally awarded funds by July 1 of the same year.

States submitted an original and two copies of their documents to the Monitoring and State Improvement Planning Division (MSIP). MSIP staff logged them in, keeping one copy in a central file and giving copies to two readers, a primary and a secondary reader. The primary reader was generally the person assigned to that state as the "state contact" for monitoring, technical assistance, etc. This person was to be familiar with any monitoring issues in that state. Both readers read the documents with a checklist to determine if the required elements were present. The readers met with the team leader and discussed the documents. The team could choose to coordinate its review with other divisions in DoED and provide the state technical assistance if needed to amend the application. If there were significant problems with the application, the Office of General Counsel (OGC) could become involved. If the team agreed to recommend approval, the application was eventually approved by the director of OSEP, and an award was sent to the state. If the team did not recommend approval, the state was given reasonable notice and an opportunity for a hearing in accordance with the statute before the Secretary of Education made a final determination of ineligibility.[88]

In the past, OSEP may have given "full" or "conditional" approval of the state plan. Full approval implied that the state had satisfied the Department of Education that the necessary policies and procedures to carry out IDEA were in place. Conditional approval indicated that, while a policy or procedure was not in compliance with IDEA, the state had assured that the practice of the state was in compliance. For example, a state may have needed to change a state law to come into compliance; however, such a change may not have been possible for more than a year, since the legislature meets only every other year. OSEP would have provided conditional approval to such a state after it assured DoED that it was following the federal law and working to change the state law. Both conditional and full approval provided for full funding to the state.

As Table 2 indicates, states frequently received conditional approval of their plans. However, in the last year during which plans were submitted to OSEP, '95–'96, fewer conditional plans and more fully approved plans were in evidence. For FY '93–'94, the status of plans was as follows: 31 plans were fully approved and 27 were conditionally approved. For FY '94–'95, 43 plans were fully approved and 15 were conditionally approved. For FY '95–'96, 46 plans were fully approved, 10 were conditionally approved, and 2 received a "not applicable" ranking.[89] The percentage of fully approved state plans rose from 53 percent in FY '93–'94 to 74 percent in FY '94–'95 to 82 percent in FY '95–'96.

Table 2: Status of Approval of IDEA Part B State Plans/State Plan Reviews

States	95–96	94–95	93–94
Alabama	F	C	F
Alaska	F	F	F
American Samoa	F	F	F
Arizona	F	F	F
Arkansas	F	F	C
California	C	C	C
Colorado	F	F	F
Connecticut	F	F	F
Delaware	F	F	C
District of Columbia	C	C	C
Florida	F	F	F
Georgia	F	F	C
Guam	F	F	C
Hawaii	F	C	C
Idaho	F	F	F
Illinois	F	F	C
Indiana	F	F	F
Iowa	F	F	F
Kansas	F	F	C
Kentucky	F	F	C
Louisiana	F	F	C
Maine	C	C	C
Maryland	F	F	C
Massachusetts	F	F	C
Michigan	C	C	C
Minnesota	F	C	C
Mississippi	F	F	F
Missouri	F	F	F
Montana	F	F	F
Nebraska	C	C	F
Nevada	F	C	C
New Hampshire	F	F	C
New Jersey	F	C	C
New Mexico	F	F	F

States	95–96	94–95	93–94
New York	F	F	F
North Carolina	F	F	F
North Dakota	F	F	F
Northern Mariana Islands	F	F	F
Ohio	C	C	C
Oklahoma	F	F	F
Oregon	F	F	F
Pennsylvania	F	F	C
Puerto Rico	F	F	F
Rhode Island	F	F	F
South Carolina	F	F	C
South Dakota	F	F	F
Tennessee	C	C	F
Texas	F	C	C
Utah	F	F	F
Vermont	F	F	C
Virgin Islands	Consolidated		
Virginia	C	F	C
Washington	F	F	F
West Virginia	F	F	F
Wisconsin	C	F	F
Wyoming	F	F	F
Marshall Islands	NA	F	F
Federated States of Micronesia	NA	C	C
Republic of Palau	C	C	C

C = Conditional Approval, F = Full Approval, NA = not applicable due to changing legal status.

The reasons for the increase in states being fully approved are not readily apparent. An inquiry and analysis beyond the scope of this study may provide an explanation for this shift.

2. Competitive State Program Improvement Grants

The 1997 IDEA amendments included a new discretionary program titled State Program Improvement Grants for Children with Disabilities.[90] The purpose of these grants is to assist states, in partnership with a range of stakeholders in the states, in reforming and improving their systems that serve students with disabilities. Congress appropriated $35.2 million for these grants in FY '99. The grants will be awarded to states on a competitive basis, in the range of $500,000 to $2 million per year. The first awards were made in January 1999. Seventy-five percent of the funding received under these grants must go for personnel preparation.[91]

The statute outlines the analyses the state must conduct in developing a state improvement plan. That analysis must include the major findings of the most recent federal reviews of state compliance as they relate to improving results for children with disabilities.[92] The law also requires that the state improvement plan include improvement strategies, one of which must address systemic problems identified in federal compliance reviews.[93]

Although it is not yet clear how competitive state grants will affect state compliance with IDEA, they are intended to create an incentive toward the systemic changes a state must implement to achieve full compliance with IDEA.

3. Findings and Recommendations

Finding # III A.1

Many states are found eligible for full funding under Part B of IDEA while simultaneously failing to ensure compliance with the law.

Though no state is fully ensuring compliance with IDEA, states usually receive full funding every fiscal year. Once eligible for funding, a state receives regular increases, which are automatic under the formula. OSEP's findings of state noncompliance with IDEA requirements usually have no effect on that state's eligibility for funding unless (1) the state's policies or procedures create systemic obstacles to implementing IDEA, or (2) persistent noncompliance leads OSEP to enforce by imposing high risk status with "special conditions" to be met for continued funding.

Recommendation # III A.1

The Department of Education should link a state's continued eligibility for federal funding under Part B to the remedy of any noncompliance within the agreed upon time frame.

When a state is found out of compliance with the law via federal monitoring, continued eligibility for IDEA funding should be linked with achieving compliance within a designated time frame. The state corrective action plan or compliance agreement should spell out what must be done within a specific time frame to achieve compliance or the state will be found ineligible for all or part of the available grant money for the next fiscal period.

Finding # III A.2

The competitive State Program Improvement Grants are intended to make funding available to states for implementing improvement strategies to correct IDEA noncompliance problems.

Recommendation # III A.2A

OSEP should require that five percent of funds awarded under the State Program Improvement Grants be applied toward developing a statewide standardized data collection and reporting system for tracking the core data elements needed to measure state compliance with IDEA and evaluate educational results for children with disabilities.

Recommendation # III A.2B

When a state is found out of compliance with the law via federal monitoring, continued eligibility for State Program Improvement Grant funding should be linked with achieving compliance within a designated time frame.

B. Oversight: Federal Monitoring of States

1. Purpose of Monitoring

States are regularly monitored by OSEP. Such monitoring includes on-site visits, data collection and analysis, and the issuance of an official report. This basic monitoring process has undergone periodic changes since the enactment of IDEA. As noted in the review of annual reports below, the purpose of monitoring has shifted over the years depending on the context in which it was carried out. The law states that the Federal Government's role is one of monitoring the states to ensure their implementation of the law. Indeed, much of the responsibility for compliance lies with the states in their responsibility to monitor the local education agencies (LEAs). The Federal Government has increasingly looked to the states to take on this role and gradually redefined its role as one of partnership with the states. In fact, the IDEA amendments of 1997 strengthen the expectation that the states will monitor the LEAs. The statute holds that states are expected to reduce or withhold payments to LEAs if they are found to be out of compliance with the law.[94] For the first time, in 1998, the Federal Government took enforcement action against a state for *not* taking effective enforcement action against an LEA found to be out of compliance (see discussion of Pennsylvania as a high risk grantee).

OSEP claims its approach to monitoring has had significant positive impacts on compliance in a number of states. For example, the state educational agency (SEA) in some states has taken action to correct deficient practices identified by OSEP during the monitoring review, even before the state has received OSEP's report. In such instances, the states' solutions have often incorporated technical assistance provided by OSEP during the monitoring visits. According to OSEP, a number of states also have made positive changes, at least in part because of the emphases and findings of OSEP monitoring, in two important areas: (1) state monitoring and complaint resolution procedures, and (2) the movement of many children with disabilities from separate settings into less restrictive placement options.[95]

OSEP currently describes its monitoring as shifting from being procedurally oriented to being results oriented.[96] The purpose of monitoring as defined by OSEP today is to improve results for children with disabilities.[97] As mentioned earlier, OSEP has redesigned its monitoring process (see Appendix H) to be a component of what it calls a "state review and improvement process" where the state is a collaborator with the Federal Government and other constituencies to assess the educational success of students with disabilities and to design and implement steps for improvement.[98] There appears to be a shift away from monitoring used solely as a tool for obtaining compliance toward monitoring used as a tool for both program improvement and compliance.

2. The Decision About What to Monitor

OSEP is responsible for ensuring that states are in compliance with IDEA. The requirements of IDEA are numerous and not every requirement is monitored in every state on every monitoring visit. Neither are the same requirements monitored for the same state over time. However, as the analysis below of the most recent monitoring reports (1994–1998) indicates, there does appear to be a relatively stable set of requirements that are monitored. The decision about exactly what to monitor in a state during a particular monitoring visit appears to be determined by the team doing the monitoring based on their analysis of the information they collect about the state.

A 1995 memo from Thomas Hehir, director of OSEP, to Chief State School Officers indicates that monitoring and corrective action plans will be focusing on requirements that have the most direct relationship to student results. These requirements are identified as (1) access to the full range of programs and services available to nondisabled children, including regular and vocational education programs and curricula and work-experience programs; (2) individualized education programs, including statements of needed transition services for students age 16 and younger, if necessary; (3) education of students with disabilities in the regular education environment and the availability of a continuum of alternative placements; and (4) state systems for general supervision including complaint management and due process hearing systems.[99]

3. The Monitoring Cycle

For 1997–1998, OSEP conducted implementation planning visits in lieu of monitoring visits. The purpose of these visits was to provide technical assistance to states on the requirements of the new law. OSEP began monitoring with the new continuous improvement monitoring process in the fall of 1998. Before IDEA '97, states were on a four-year monitoring cycle. Every year 12 to 15 states were monitored.[100] The monitoring cycle described and the monitoring reports analyzed below predate the changes OSEP implemented in the fall of 1998.

4. The Monitoring Process Before the Fall of 1998

The monitoring process took place in four phases: pre-site activities, the on-site visit, the issuance of the report, and the corrective action plan.

a. Pre-Site Activities

Approximately three to six months before an on-site visit, OSEP took the following steps: (1) scheduled public meetings and on-site visit dates with the state, (2) informed interested parties of the meeting dates and sites, (3) requested documents from the state for review, (3) held public and outreach meetings in the state to gain input, (4) determined issues to be reviewed and established a schedule for interviews with the SEA, (5) selected agencies and schools/programs to be visited, (6) contacted local sites, (7) established schedules, and (8) requested documents. Monitoring staff were usually in the state for about one week for the pre-site activities.

Beginning in 1994, OSEP began conducting outreach meetings in addition to public meetings, which were open forums. These meetings were by invitation only and included disability leaders in the state, representatives of the Parent Training and Information (PTI) centers and the Protection and Advocacy (P&A) systems. Generally about 12-20 disability leaders from the state attended the meetings.

Attendance at the public meetings ranged from five to 200. Between one and six public meetings were held in different geographic locations in a state, at different times of the day. SEA mailing lists, and sometimes lists from PTIs or other advocacy groups, were used to send "interested party" invitations to the meetings.

After the pre-site activities, in preparation for the site visit, the monitoring staff analyzed the information collected in the state and gathered and considered additional relevant information obtained from (1) complaints received by OSEP about the state and its policy and procedures, and (2) contacts with the Office for Civil Rights (OCR), the Rehabilitation Services Administration (RSA), and advocacy groups within the state. All of this information was used to determine what issues were to be examined and where the on-site visits were to take place.

b. The On-Site Visit

The on-site visit usually lasted a week and took place about five to six weeks after the pre-site activities. Six to ten people made up the monitoring team. The on-site visit involved meeting with officials of the SEA and visiting LEAs, including schools. The monitoring team used the information gathered from the pre-site activities to determine which LEAs to visit. It considered when the state last monitored the LEA, and chose some LEAs that had been recently monitored by the state and some that had not been monitored for a long period of time. It looked at the results of the SEA monitoring and compared them to its own results. If the team saw differences that hadn't been corrected, it knew the states were not enforcing the corrections. If it found deficiencies that the state monitoring had not found, there was an indication that the state monitoring system was not effective in identifying deficiencies.[101]

In smaller states, the monitoring teams usually visited four or five LEAs. In larger states, the teams visited eight to 10 LEAs. The LEAs were notified by the SEA two to three weeks in advance that the monitoring team would be visiting. The team tried to have geographic diversity in its visits and took special populations into consideration. It looked at LEA data regarding placements in separate settings, personnel, related services, etc. The data may have revealed problems in the LEA that the team may have pursued while visiting there. The team tried to visit elementary schools, middle schools, and high schools. It met with administrators, looked at student records, and interviewed teachers. It did not observe students or compare the students' records to the students' experience.[102]

The team members in the field talked with the team members at the SEA to discuss data collection and potential findings. An exit conference was held with the SEA to present the preliminary findings.[103]

c. The Monitoring Report

The monitoring team returned to Washington, DC, and worked together to analyze the data they had collected and the results of the monitoring visit. The team might call the state back to request clarification or additional information. The report was developed and reviewed by the team leader, the division director, the director of OSEP, and the OGC. The report was cleared and issued to the Chief State School Officer with a copy sent to the director of special education in the state.

The intended time line for the issuance of the report was 150 to 180 days after the on-site visit.[104] Analysis of the most recent monitoring reports for each state revealed that the time elapsed between the monitoring visit and the final report was greater than 90 days for 45 states, greater than 180 days for 27 states, and greater than 365 days for 12 states.

In the past, OSEP issued draft reports to the states, and the states could then respond and defend their response. OSEP would consider their response and might make changes in the report based on that response. OSEP eliminated this practice with the 1994–95 monitoring cycle. It began issuing only the final report. The state had 15 calendar days from the date it received the report to submit a letter to OSEP documenting findings in the report that were without legal or factual support. If OSEP determined that it was necessary to delete or revise a finding, a letter setting forth the deletion or revision was appended as part of the report.[105]

d. Corrective Action Plans

In every monitoring report that documented findings of noncompliance (which were all monitoring reports), parameters for a corrective action plan (CAP) were set forth. OSEP was available to work with the state to develop the plan. The plan was to be submitted to OSEP within 45 days of receipt of the report. If the state did not submit a plan, OSEP unilaterally would develop the CAP for the state.[106] (OSEP reported that to its knowledge this circumstance never occurred.)[107]

The time line for completing a corrective action plan ranged from one to three years, with the average being two years. The deadline depended on the nature of the deficiency, as correction for some might take significantly more time than for others.

Follow-up visits might be conducted to determine the implementation of the CAP. For some states, submission of documentation might be the follow-up. Generally, OSEP reported that it conducted four to six follow-up visits per year to assess CAP implementation.

Generally, follow-up visits were similar to mini on-site visits. The follow-up team comprised two to three people who visited the state office for about two days and LEAs for about two days. If OSEP determined that the corrective action plan had been implemented and was effective, it closed out the plan. In situations where OSEP found little or no change, it scheduled another follow-up visit. In two situations (Pennsylvania and New Jersey) where the second follow-up visit found continued noncompliance, the states were designated as high risk grantees (see earlier discussion).

e. OSEP's Maintenance of Monitoring Reports and Records Regarding Monitoring Reports

OSEP's policy was to keep monitoring records related to IDEA for three to five years.[108] Thus, OSEP appeared to have very few monitoring reports more than five years old, nor did they have an inventory listing that reported which ones they possessed and which ones they did not. This study initially requested a complete set of reports for 11 states, going back in time as far as

DoED had records. Because of the limited availability of reports, this request was modified to include only six states. For one state, Illinois, the oldest report DoED had was from 1991. For other states, some reports were missing (for example, while DoED had the 1983 report from New York, it did not have the 1987 report). There was no chronology of monitoring over time in OSEP.

5. Analysis of Fifty Federal Monitoring Reports

Little research on state compliance with special education requirements over time has been conducted. NCD was aware of only one study that had examined compliance trends. That study, released in1993 by the National Council on Disability, disaggregated OSEP state monitoring data collected from April 1989 to February 1992 to the school district level. The study revealed very high levels of school district noncompliance as noted in Table 3 below.[109]

Table 3: State Monitoring Data (Reprint from NCD Study)

Requirement	Districts Monitored	Districts in Noncompliance	Percentage in Noncompliance
IEP	165	150	90.9%
LRE	165	143	86.7%
Procedural Safeguards	165	152	92.1%

Note: IEP = Individualized Education Program; LRE = Least Restrictive Environment

The analysis below, based on a study of the most recent OSEP monitoring report issued for each state, summarizes the findings of noncompliance for each state in seven areas.

a. Methodology

The most recent OSEP monitoring report of every state was reviewed and analyzed. These reports were issued between 1994 and 1998. Seven key areas of legal requirements were analyzed for each state: (1) FAPE, (2) LRE, (3) IEP, (4) transition, (5) general supervision, (6) procedural safeguards, and (7) protection in evaluation. These were requirements that OSEP had chosen to monitor in most of the states, which had been monitored fairly consistently across states over time.

b. Standards Used by OSEP for Determining Noncompliance

It should be noted that the charts and tables throughout this section depict findings of noncompliance in the indicated areas for each state, but not the *extent* of noncompliance represented by that finding. The OSEP monitoring process has had no measurable benchmarks or clear criteria for distinguishing the severity of LEA noncompliance with any given requirement. OSEP reported that it made a finding of noncompliance in a state only when such noncompliance was "systemic," meaning that it had occurred "with some frequency,"[110] although there was no regulation or documented policy, guidance, or internal procedure stating this particular criterion. Indeed, the "systemic" criterion, even as OSEP defined it, was not consistently applied in making determinations of noncompliance."[111] This lack of consistency in how findings of noncompliance were made seemed at variance with the compliance standard for SEAs as articulated in the law and in OSEP's own communication to the states (see following discussion).

IDEA requires the SEA to "ensure" that the law's requirements are met by all educational programs that are, or should be, delivering special education services to students with disabilities.[112] In the 1997 Texas Monitoring Report, OSEP clarified the scope of the SEA's full responsibility for ensuring compliance, regardless of the methods the SEA might have used to identify and "count" deficiencies for correction.

> "The procedures for TEA's District Effective Compliance system (*Reference Guide*, September 1996) state that, 'a discrepancy will be cited during the on-site review when it is determined that the violation in question occurs systemically throughout a campus, a district, or a cooperative... As a general rule, a discrepancy will be cited when a violation is found in 30 percent or more of the student programs reviewed.... Violations of "a more serious nature"...are to be

> cited whenever a single violation occurs. Otherwise, violations that occur in less than 30 percent of the files sampled are not cited, and TEA requires agencies to take no corrective action.'
>
> *"Although a state educational agency has some discretion about the method it uses to identify and ensure correction of deficiencies, it is responsible for ensuring that all Part B requirements are met by subgrantees for all students with disabilities. TEA must identify and document all noncompliance found through its monitoring process, even where the violation does not reach the 30 percent threshold, or does not meet the definition for "violations of a serious nature."* Further, although corrective action that TEA requires may vary depending upon how isolated or systemic a finding is, it must ensure correction of all identified noncompliance."[113]

In this monitoring report, OSEP communicated the expectation that Texas' corrective action on this issue was to monitor such that all deficiencies were identified and corrected, "regardless of the prevalence or magnitude of those findings."[114] OSEP's finding and explanation made clear that it was the responsibility of the SEA to ensure correction of any occurrence of noncompliance with IDEA. Insofar as the SEA failed to ensure that all Part B requirements have been met, the SEA was not in compliance with IDEA.

Although OSEP articulated a clear standard with respect to findings of noncompliance, it emphasized that the severity and extent of noncompliance varied with each finding. A finding might have been based on an egregious problem or on a technical deficiency of a less serious nature (i.e., a finding of noncompliance with the procedural safeguard requirements might have been based on (1) a wholly ineffective due process hearing system, or (2) the state's failure to provide a fully accurate explanation of a procedural safeguard as part of its required notice to parents).[115] Likewise, a noncompliance finding might also have been based on several to many instances of noncompliance with a requirement. These variations in the severity and extent of a noncompliance finding, however, do not lessen the responsibility of the SEA for identifying and ensuring that all instances of noncompliance are corrected.

c. Summary of State Noncompliance Findings

Chart 4 below indicates how many states failed to ensure compliance in each of the listed areas according to the most recent monitoring report for each state. The largest areas of noncompliance were general supervision, where 90 percent, or 45 states, failed to ensure compliance, and transition, where 88 percent, or 44 states, failed to ensure compliance. Other key noncompliant areas were FAPE, where 80 percent, or 40 states, failed to ensure compliance, and LRE, where 72 percent, or 36 states, failed to ensure compliance. Table 5 provides a state-by-state display of areas out of compliance. Thirty states failed to ensure compliance in five, six, or seven areas of IDEA requirements considered by this report. Appendix G provides a one page summary of the noncompliant findings for each state from its most recent monitoring report.

Chart 4: Number and Percentage of Noncompliant States in Each Area According to 1994–1998 OSEP Monitoring Reports

Area of Noncompliance	States Out of Compliance	
	Number of States	Percentage of States
General Supervision	45	90%
Transition	44	88%
FAPE	40	80%
Procedural Safeguards	39	78%
LRE	36	72%
IEPs	22	44%
Protection in Evaluation	19	38%

Table 5: State Noncompliance as Reported by 1994–1998 Monitoring Reports[116]

State	FAPE	LRE	IEPs	Transition	General Supervision	Procedural Safeguards	Protection in Evaluation
Alabama	X	X		X	X	X	
Alaska	X			X	X	X	
Arizona	X		X	X	X	X	
Arkansas	X			X			
California	X	X		X	X	X	X
Colorado				X	X	X	
Connecticut	X	X	X	X	X	X	X
Delaware	X	X		X	X	X	
Florida	X	X	X	X	X	X	
Georgia	X	X			X	X	
Hawaii				X		X	
Idaho	X	X		X	X	X	
Illinois	X	X		X	X	X	X
Indiana	X	X		X	X		X
Iowa	X	X	X	X	X	X	
Kansas		X		X	X	X	
Kentucky	X	X	X	X	X		
Louisiana		X	X	X	X	X	
Maine	X			X	X	X	
Maryland		X		X	X	X	
Massachusetts	X	X	X	X	X	X	
Michigan	X	X	X	X	X	X	X
Minnesota	X	X		X	X		
Mississippi	X	X		X	*	X	
Missouri	X	X		X	X	X	X
Montana	X	X	X	X	X	X	
Nebraska	X				X	X	X
Nevada				X			
New Hampshire	X		X	X	X	X	
New Jersey	X	X	X	X	X	X	X
New Mexico	X		X	X	X	X	X
New York	X	X	X	X	X	X	X
North Carolina	X	X		X	X	X	

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State	FAPE	LRE	IEPs	Transition	General Supervision	Procedural Safeguards	Protection in Evaluation
North Dakota		X	X		X	X	
Ohio	X	X		X	X	X	
Oklahoma	X			X			X
Oregon	X			X	X		
Pennsylvania	X	X	X		X	X	X
Rhode Island	X	X	X	X	X	X	X
South Carolina	X	X			X	X	X
South Dakota			X	X	X	X	
Tennessee	X	X		X	X	X	X
Texas	X	X		X	X		X
Utah	X	X	X	X	X	X	
Vermont	X		X	X	X		
Virginia	X	X		X	X		X
Washington		X	X	X	X	X	X
West Virginia	X	X		X	X		
Wisconsin	X	X	X	X	X	X	X
Wyoming		X	X		X	X	

Requirements with which states were found noncompliant are indicated by an "X."

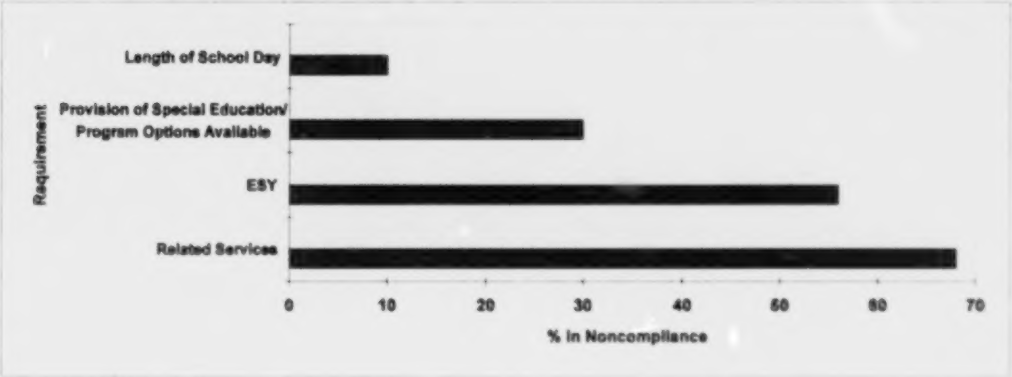
In the analysis of the fifty state monitoring reports below, each of the monitored requirements is described briefly with a summary of the findings from all fifty reports, followed by examples from the reports to illustrate the basis for OSEP's noncompliance findings.

d. Analysis of Findings of Noncompliance

i Free Appropriate Public Education

FAPE gives children with disabilities access to the supports and accommodations they need to obtain an education, requiring that special education and related services be made available to them in accordance with their IEPs. OSEP found that 40 states (80%) had failed to ensure compliance with the FAPE requirements. Specific FAPE requirements and the percentage of states in noncompliance are illustrated in Chart 6:

Chart 6: State Noncompliance with FAPE Requirements



Note: ESY = Extended School Year

(a) Extended School Year

ESY services must be made available to individual students who require such services in order for them to be receiving FAPE. This requirement recognizes that some students with disabilities will not receive an appropriate education unless they have special education or related services during the summer months.

OSEP found that 28 states (56%) had failed to ensure compliance with the ESY requirements, as shown in the following examples:

- In Alabama, ...[i]nterviews with teachers and administrators in public agencies A, B, and D revealed that extended school year was not available for students in the facilities visited by OSEP. Teachers interviewed... stated that they were unsure as to the criteria for extended school year, and therefore did not know how to determine the need for extended school year services. None of these 11 teachers had ever participated in an IEP meeting where students were considered for such services. Both building level and district administrators... confirmed that teachers and administrators were not aware of the criteria for extended school year services.[117]
- In four out of five public agencies visited in Iowa, OSEP determined that ESY services were not considered on an individual basis and provided to students who required them.[118]
- In Delaware, OSEP found that availability of ESY services was restricted to students with autism and those who received "Level 5" services. Participation of other students in ESY services was not determined based on the IEP, and in some of the agencies visited it was not available to other students at all.[119]

- In four of the five agencies visited in Connecticut, "...children with particular types of disabilities were categorically excluded from consideration for ESY services."[120]
- Two teachers in an agency in Arkansas reported that the agency did not offer ESY and that it was never discussed at any IEP meeting they attended.[121]

(b) Related Services

Students with disabilities must be provided with related services such as occupational therapy, speech therapy, physical therapy, and psychological counseling based on their individual needs as reflected in their IEPs. This requirement recognizes that without these related services, some students with disabilities cannot adequately access and learn their curricular materials.

OSEP found that 34 states (68%) had failed to ensure compliance with the related services requirements, as shown in the following examples:

- In Florida, ...OSEP was informed in interviews with district and building-based administrators, teachers, and related services personnel in Agencies F, G, and H that psychological counseling, as a related service, is not available to students with disabilities, regardless of need. A building-based administrator in Agency E indicated that many students need psychological counseling but it is not available as a related service.

  ...OSEP was informed by two related service providers in Agency G that they were instructed not to list individual therapy on their caseload(s). They stated that they will provide the service informally, but it is not reflected on the student's IEP (there are no goals and objectives).

  ...A special education teacher in Agency H told OSEP that students may have to go to a center-based or day program if they need more intense counseling services.[122]
- In one agency in Minnesota, OSEP found that psychological counseling was not considered for inclusion in any student's IEP.[123]
- An administrator from an agency in Arizona confirmed "that related services (speech therapy, occupational therapy, and physical therapy) are not based on the individual student's needs but are based upon the availability of the service provider."[124]
- Administrators and teachers from two agencies in Oklahoma stated that psychological counseling services are not provided based on an IEP, even if a child needs such services to benefit from special education.[125]
- In one district in California, an administrator told OSEP that there were 42 students whose IEPs called for speech services, but who were not receiving the services; in another district, an administrator reported that students whose IEP teams believed they needed mental health services to benefit from special education were referred to outside

agencies for the services, rather than receiving the services free of charge through their IEPs.[126]

(c) Length of School Day

Unless their individual needs dictate otherwise, the length of the school day for students with disabilities must meet their state's general standard.

OSEP found that five states (10%) had failed to ensure compliance with this requirement, as shown in the following examples:

- Administrators in two districts in Delaware reported that 17 students had their school days shortened by an hour and a half due to "transportation schedules."[127]
- In Arkansas, ...[b]ecause there were not enough modified buses in the agency to transport students with disabilities, an administrator in Agency C reported that six students received one hour fewer per day than the state standard.

  One administrator reported and another administrator confirmed that a classroom of children with disabilities in Agency B had their school day shortened by 30 minutes per day, which was less than the state standard, because students in a self-contained program were transported from the school where their classroom was located to their 'home school' in order to catch the regular bus.

  An Agency J administrator reported to OSEP that four children with disabilities who attended the vocational technical program were in school one hour fewer than the state standard because of the time needed to transport them from another district. As a result, these children were only able to get two hours of credit for their vocational class at Agency J—instead of the normal three hours of credit.[128]

(d) Provision of Special Education/Program Options Available

Students' IEPs must set forth with specificity the amount of special education and related services the students are to receive. These decisions must be based upon individual need. In addition, program options that meet their needs must be made available to students with disabilities.

OSEP found that 15 states (30%) had failed to ensure compliance with these requirements, including the following examples:

- In [Pennsylvania] public agency C, six of seven records reviewed by OSEP had no specific statements of special education or related services.[129]
- In Connecticut, ...OSEP found that the technical vocational education such as that provided through the state-operated regional schools was not an available program option for students with moderate or significant disabilities. OSEP confirmed through interviews that although some high school students could benefit from technical vocational

education available only at the regional programs, this option was not available to certain students with disabilities.[130]

- In Kentucky, OSEP found that 22 of 53 IEPs reviewed, in three of the four agencies visited, either did not state the specific amounts of special education and related services or stated the amounts in ranges. Individuals interviewed reported that the amount of services was not based upon individual student needs. In addition, twelve of the 53 students were not receiving services that conformed to their IEPs. [131]
- In Ohio, OSEP reviewed 94 student records in 11 of the 12 agencies visited, and identified 75 cases in which the amount of special education and related services was either not recorded on the IEP or the services were stated in ranges. Teachers, related service providers, and agency administrators reported that the amount of services was stated as a range because the lesser amount reflected state minimum standards, while the greater amount indicated the child's actual need. The child would receive the amount of services needed if the therapist had time to provide it; if not, the child received the lesser amount.[132]

ii Least Restrictive Environment

LRE requirements hold that students with disabilities should be educated, to the maximum extent appropriate, with their nondisabled peers. Separate schooling or separate classes or other removal of children with disabilities from the regular educational environment must take place only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.

OSEP found that 36 states (72%) had failed to ensure compliance with the LRE requirements. It is interesting to note that of the remaining fourteen states, OSEP found six states not out of compliance on LRE, but provided no information at all on LRE compliance for the other eight states. In all six states found not out of compliance, the finding was based on site visits that had not included any separate facilities. Such facilities have been sources of findings of LRE noncompliance in many states.

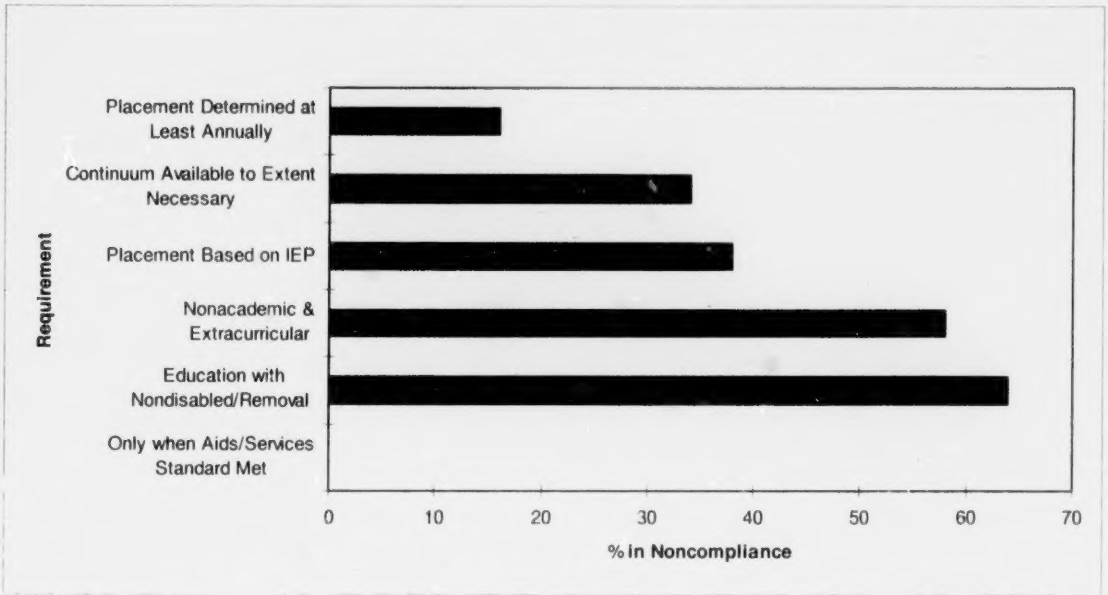
It was also noteworthy that during this period of time, OSEP conducted monitoring visits at only three state schools for students who are deaf or have visual impairments,[133] and only three separate private facilities. These sorts of facilities have powerful political constituencies, both nationally and in many states. It is of particular importance that OSEP monitored such facilities because states sometimes have failed to exercise their general supervisory authority over them. In Kentucky, for example,

> "[a]t the time of OSEP's 1992 Monitoring Report, KDE [Kentucky Department of Education] acknowledged that it had not monitored the Kentucky School for the Deaf and the School for the Blind for approximately 10 years. Comments received at the public meetings held in June prior to OSEP's September 1995 on-site visit indicated that KDE maintains a "hands off" policy toward both state

> schools and that KDE has not yet monitored either school even though OSEP's 1992 report had cited KDE for failure to exercise general supervisory authority over these programs. During OSEP's 1995 monitoring visit, KDE administrators acknowledged that they had failed to exercise their general supervisory responsibility for these programs in that the Kentucky School for the Deaf had not yet been monitored by KDE for compliance.... Although the Kentucky School for the Deaf was conducting a self-study during the 1995–96 school year in preparation for an on-site monitoring visit during the 1996–97 school year, and the Kentucky School for the Blind had received an on-site monitoring visit in March 1995 and a follow-up visit in September 1995, at the time of OSEP's visit, KDE could not provide OSEP with documentation to verify that special education programs for children enrolled in these schools meet state and federal requirements."[134]

Finally, there was no evidence in the text of any of the reports indicating that OSEP reviewed the files of students placed in out-of-state residential facilities for LRE compliance. Without such review, it was difficult to determine OSEP's basis for the following conclusion: "During the 1992–1993 school year, Iowa Department of Education (IDE) placed approximately 200 students in out-of-state programs, *based upon their unique needs*."[135] Specific LRE requirements and the percentage of states in noncompliance are illustrated in the following chart:

Chart 7: State Noncompliance with LRE Requirements



(a) Education with Nondisabled Students/Removal Only When Aids and Services Standard Met

Students with disabilities must be educated with nondisabled students to the maximum extent appropriate to meet their needs. Removal from less restrictive settings can occur only if students' IEPs cannot be implemented in those settings, even with the use of supplementary aids and services.

However, OSEP found that 32 states (64%) had failed to ensure compliance with these requirements, including the following examples:

- OSEP found that in two districts in Mississippi, regular class placements were not discussed at annual review or IEP meetings for some students with disabilities. One teacher told OSEP that this did not occur "even though some of the students this teacher serves could probably perform satisfactorily in some of the regular academic classes."[136]

- Administrators and teachers in three districts in Delaware told OSEP that these LRE requirements were not followed in their districts because the state's funding formula was a disincentive to regular class placements for students with disabilities.[137]

- In Idaho, "....OSEP found that the removal of children with disabilities from regular education programs in public agency B was not based on a determination that the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily, but, rather on administrative convenience. A special education teacher of a self-contained program for students with moderate to severe/profound disabilities...stated, 'These students have been here forever. This is where they have been and this is where they are going to be.' She further stated that other options in less restrictive settings are not explored or considered by the IEP team."[138]

- In Iowa, [t]wo...administrators responsible for the administration and supervision of programs in public agency E stated that the consideration of the supplementary aids and services needed by a student with disabilities is "not part of the IEP process."[139]

(b) Nonacademic and Extracurricular

Students with disabilities must participate with nondisabled peers in nonacademic and extracurricular activities and services to the maximum extent appropriate to their needs.

OSEP found that 29 states (58%) had not ensured compliance with these requirements, as shown in the following examples:

- In New York, "[t]he special education director and a program administrator in public agency F informed OSEP that there was no individualized determination of the maximum extent to which each student with a disability placed in the BOCES' center-based (separate school) programs could participate with nondisabled children in nonacademic and extracurricular services and activities, and that there were currently no opportunities for such integration, regardless of individual student need."[140]

- In South Carolina, "OSEP determined in interviews with administrators in agencies C and G that the participation of students with disabilities with nondisabled peers in nonacademic and extracurricular activities was not determined on an individual basis. The administrator in agency G reported efforts on the part of the agency to involve disabled students in nonacademic and extracurricular group activities at neighboring regular education schools. However, participation was not based on the individual needs of students, but on the activities (e.g., assemblies) being available to the entire class of special education students as a group activity. The administrator in agency C stated that participation in nonacademic and extracurricular activities is not occurring for most of the students enrolled in the agency C separate facility, even though these students could benefit from participation in nonacademic and extracurricular activities with nondisabled peers."[141]

- In California, three administrators reported that "students identified as seriously emotionally disturbed who are served in a separate school program in the district, and students with disabilities who are served in the agency's preschool program (separate school), are not provided adequate opportunities for integration with age appropriate peers, regardless of individual need. [These administrators] reported to OSEP that as a general practice there was no individualized determination of the maximum extent to which each student with a disability placed in the separate school programs could participate with nondisabled children in nonacademic and extracurricular services and activities."[142]

(c) Placement Based on IEP

Placement decisions for students with disabilities must be based on their IEPs. The practice of not basing placement decisions on students' IEPs can have the effect of depriving some students with disabilities of access to schools attended by their friends and neighbors.

OSEP found that 19 states (38%) had failed to ensure compliance with this requirement, including the following examples:

- An agency administrator in Ohio stated that "approximately 25 percent of the students who are placed into special education programs are placed prior to the development of their IEPs. A teacher [in the same agency] high school visited by OSEP stated that placements were based on parent request, administrative convenience. or category of disability, rather than on the students' IEPs."[143]

- In Iowa, "[b]oth teachers interviewed by OSEP in the school visited in agency B indicated that placement is determined prior to the development of a student's IEP.

  Two of the four teachers interviewed by OSEP in agency C indicated placement is determined prior to the development of a student's IEP.

  An administrator and two teachers from the elementary school in agency D told OSEP that, for both initial and subsequent placements, placement is determined prior to the development of the student's IEP."[144]

- In Connecticut, "OSEP found that students with moderate, significant, or profound disabilities are not permitted to attend the high school that agency D nondisabled students attend. Special education teachers, the administrator of the middle school, the administrator responsible for supervising the provision of special education services in agency D and a school nurse, and the PPT minutes in student records confirmed that placement practices for these students were not based on the student's IEP, but rather on the student's IQ, program location and availability of related services (e.g., medical services)."[145]

(d) Continuum Available to Extent Necessary

A continuum of placement options must be available to students with disabilities to the extent necessary to implement their IEPs. The lack of availability of a full continuum of placement options can have the effect of forcing students into placements that are more restrictive than necessary to implement their IEPs.

OSEP found that 17 states (34%) had failed to ensure compliance with this requirement, including the following examples:

- Teachers and a building-level administrator in a Rhode Island public agency told "OSEP that, at their school, full-time regular education placement...was not a continuum option for any students with disabilities. At [a second public agency], three teachers told OSEP that full-time regular education was not a continuum option for any of the students with disabilities attending the school that OSEP visited. Administrators and teachers at [a third agency] told OSEP that currently, full-time regular education placement was not an option in the district."[146]

The inability or unwillingness of school districts to provide a full continuum of placement options also can have the effect of forcing students into placements that are more restrictive than necessary to implement their IEPs:

- In New Jersey, "[a]n administrator stated that the Child Study Team...looks at a student's classification at the annual review and determines whether or not a student is eligible for Resource Room services. A teacher and administrator further elaborated that the Resource Room option is limited to two periods a day. If more time is required, the student is placed in a self-contained classroom for a full day. There are no other options for resource service for more than two periods or less than a full day."[147]

(e) Placement Determined at Least Annually

Placement decisions for students with disabilities must be made at least annually. Failure to re-evaluate placement annually can result in continuing placements that no longer meet the educational and related service needs of the child.

OSEP found that eight states (16%) had failed to ensure compliance with this requirement, including the following examples:

- "An administrator and two teachers from public agency C in North Carolina informed OSEP that placement determinations are reviewed after the triennial re-evaluation unless the child's parents want a program change prior to the re-evaluation. An administrator and one teacher from public agency D stated that placements for students with disabilities are determined at the time of initial placement into the special education program and thereafter at three-year intervals coinciding with the time of the student's re-evaluation, unless special circumstances arise indicating that a change may be needed. Teachers from public agencies F and H told OSEP that the IEP team does not reconsider the student's placement until the student is ready for a higher functioning program, or the student 'ages out' to the next level."[148]

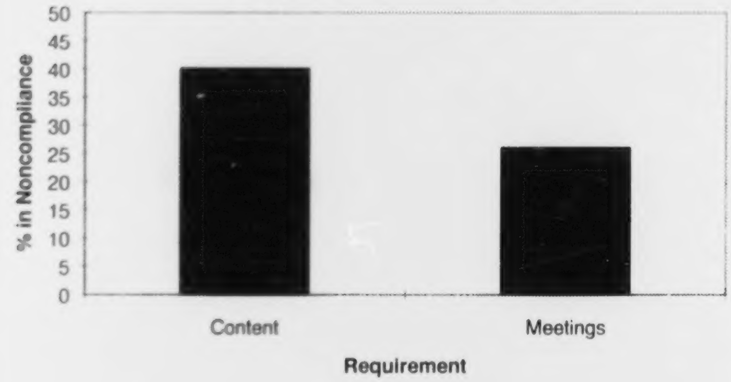
- In Georgia, "[w]hen asked how often placement determinations for students with disabilities are made, three administrators and four teachers from agencies A, D, and E informed OSEP that placement options are considered at initial placement and at triennial meetings, but not at annual reviews. 'At annual reviews, we just look at goals and objectives' explained a teacher from agency A."[149]

iii Individualized Education Programs

IDEA requires that all students have an individualized education program that documents (1) their current level of performance, (2) their goals and objectives, (3) the services to be provided to meet those needs, (4) the dates for initiation of services and anticipated duration, (5) criteria for determining the extent to which objectives are being met, and (6) transition service for students aged 16 and older.

OSEP found that 22 states (44%) had failed to ensure compliance with the IEP requirements. Specific IEP requirements and the percentage of states in noncompliance are illustrated in the following chart (Chart 8):

Chart 8: State Noncompliance with IEP Requirements



(a) IEP Content

IEPs for students with disabilities must address their unique individual needs and must include students' present levels of performance; annual goals; short-term objectives; and evaluation criteria, procedures, and schedules. IEPs must also include the extent to which students will participate in general education programs.

OSEP found that 20 states (40%) had failed to ensure compliance with the IEP content requirements. The failure to base IEPs on the unique individual needs of students is also demonstrated by goals and objectives that do not correspond to the needs identified by students' IEPs. For example,

- "OSEP's comparison of 17 IEPs in a New Jersey agency showed identical goals and objectives for 16 children. A teacher stated that all students were taught the same skills and that the goals were based on the curriculum. During the review of one IEP, OSEP discovered that a goals and objectives page had the name of another student on it. School personnel were unable to explain this discrepancy.

  OSEP reviewed another student record that showed the same goals and objectives for three years. In another agency, a comparison of 12 IEPs showed identical goals and/or objectives for six children enrolled in a job orientation program. A teacher for three of the students stated that even though the IEP goals and objectives were identical in the children's IEPs, the children's needs were not identical. Another teacher for the other three children in that same agency told OSEP staff that the IEP short-term objectives were identical and did not address individual students' needs in terms of their participation in the job-orientation program."[150]

The failure to base IEPs on the unique individual needs of students is also shown by goals and objectives that do not correspond to the needs identified by students' IEPs:

- In Kentucky, "[f]ourteen of the 53 IEPs reviewed by OSEP did not include goals and objectives to address each of the students' needs identified on the IEP. OSEP found that IEPs did not contain goals and objectives related to students' needs for instruction in special education settings or for related services such as speech therapy."[151]

States' violations of IEP content requirements are often fairly widespread. The following table displays the number of IEP deficiencies as the numerator and the total number of IEPs reviewed as the denominator for five states:

Table 9: State Noncompliance with IEP Content Requirements in Five States

Requirement	Iowa Report, 3/20/95, p. 17	Washington Report, 3/15/95, p. 23	Wyoming Report, 3/3/95, p. 12	New Hampshire Report, 8/25/94, p. 23	Michigan Report, 3/21/95, p. 37	% of IEPs in Violation
Present levels of performance	N/A	10/55	22/39	17/41	15/65	32.0
Evaluation schedules	17/58	23/55	18/39	25/41	14/65	37.6
Annual goals	N/A	20/55	N/A	15/41	N/A	36.5
Objective criteria	21/58	14/55	N/A	12/41	N/A	30.5
Evaluation Procedures	14/58	15/55	23/39	5/41	N/A	29.5
Short-term objectives	N/A	25/55	N/A	N/A	N/A	45.5

(b) IEP Meetings

IEP meetings must include a representative of the public agency—other than the student's teacher—who is qualified to supervise or provide special education and the student's teacher. The meetings should also include the student, if appropriate, and may include other individuals at the discretion of the parent or agency. Agencies must take steps to ensure that the student's parent(s) participates in meetings, including giving timely notice of meetings, scheduling meetings at mutually convenient times and places, and using other methods to ensure parent participation when parents cannot attend.

OSEP found that 13 states (26%) had failed to ensure compliance with the IEP meeting requirements, including the following example:

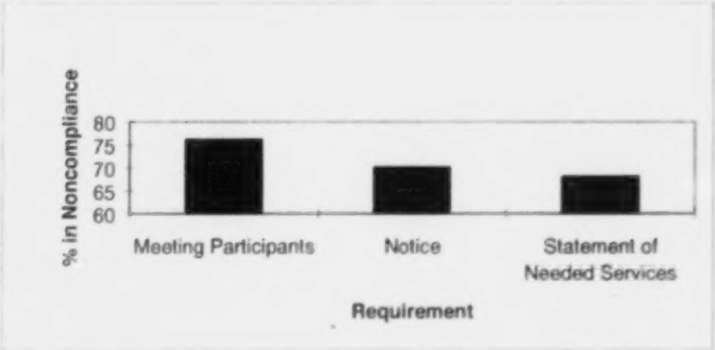
- In Massachusetts, "...OSEP was informed by four agency administrators, eight building administrators, and nine teachers in six public agencies...that one person, usually the educational programmer or the student's special education teacher, develops the goals and objectives *after* the IEP meeting. ...OSEP finds that this practice is inconsistent with...the requirement that one or both of the child's parents...must participate in the development of the child's IEP...."[152]

iv Transition Services

Students age 16 and older (and younger if deemed appropriate) must have IEPs that include a statement of needed transition services.

OSEP found that 44 states (88%) had failed to ensure compliance with the transition requirements. Specific transition requirements and the percentage of states in noncompliance are illustrated in the following chart:

Chart 10: State Noncompliance with Transition Requirements



(a) Notice

If a purpose of an IEP meeting is the consideration of transition services, the notice of the meeting must indicate this purpose, indicate that the student will be invited, and identify any other agencies that will be invited.

OSEP found that 35 states (70%) had failed to ensure compliance with the transition notice requirements. For example,

- In North Carolina, "OSEP found that in most instances [the total in all agencies was 23 of 27 IEP notices] the notices used by four public agencies to inform parents of IEP meetings did not specify that a purpose of the meeting is the consideration of transition services, when those notices were for meetings for students who were 16 years or older."[153]

(b) Meeting Participants

If a purpose of an IEP meeting is the consideration of transition services, invitees must include the student and representatives of other agencies likely to be responsible for providing or paying for transition services. If the student does not attend, the public agency must take steps to ensure that the student's preferences and interests are considered.

> ***"I've never been asked, 'Hey, what's your perspective? What can I do to make your education better?' And I feel like you can ask the parents all you want, but if you really want to get down to the heart of the problem and how the students are being affected, maybe you should ask them first."* - A high school senior with a disability from South Carolina on having input to the IEP**[154]

OSEP found that 38 states (76%) had failed to ensure compliance with these requirements, including the following examples:

- In two New Hampshire public agencies, in 14 of 17 records reviewed by OSEP for students 16 years or older, the student was not invited to the IEP meeting.[155]

In Massachusetts, "OSEP reviewed the files of 18 students ages 16 and older in public agencies A, E, and F, and found that three of six students in agency A, four of six in agency E, and three of six in agency F did not attend their most recent IEP meeting. Four teachers and an administrator responsible for the administration and supervision of special education programs in those agencies told OSEP that they do not invite the student to the IEP meeting even if one of the purposes of the meeting is the consideration of transition services.

Three administrators responsible for the administration and supervision of special education programs, four building level administrators, and three teachers in public agencies A, E, and F told OSEP that there is no procedure for ensuring that the preferences and interests of the students are considered during the development of the statement of needed transition services."[156]

(c) Statement of Needed Services

The IEPs of students 16 and older, and of those who are younger if appropriate, must contain a statement of needed transition services, including (1) activities in instruction, (2) community experiences, (3) employment, and (4) adult living.

OSEP found that 34 states (68%) had failed to ensure compliance with these requirements. For example,

- In Missouri, "OSEP found that out of a total of 42 IEPs of students 16 or older, 15 IEPs...contained no statements of needed transition services... An agency administrator explained to OSEP that the district has not done a good job on transition and that it is not district practice to provide transition services to post-secondary education for students with mild disabilities, such as learning disabilities."[157]

- In Colorado, "[b]ased on a review of records for age-appropriate students in two agencies, OSEP found that 11 of 21 IEPs... did not contain statements of needed transition services or included incomplete statements of needed transition services. Incomplete statements... omitted services in one or more of the areas of instruction, community experiences, and employment/other post-school adult living objectives, and did not include a statement that the IEP team had determined that the student did not need services in those areas and the basis for that determination...."[158]

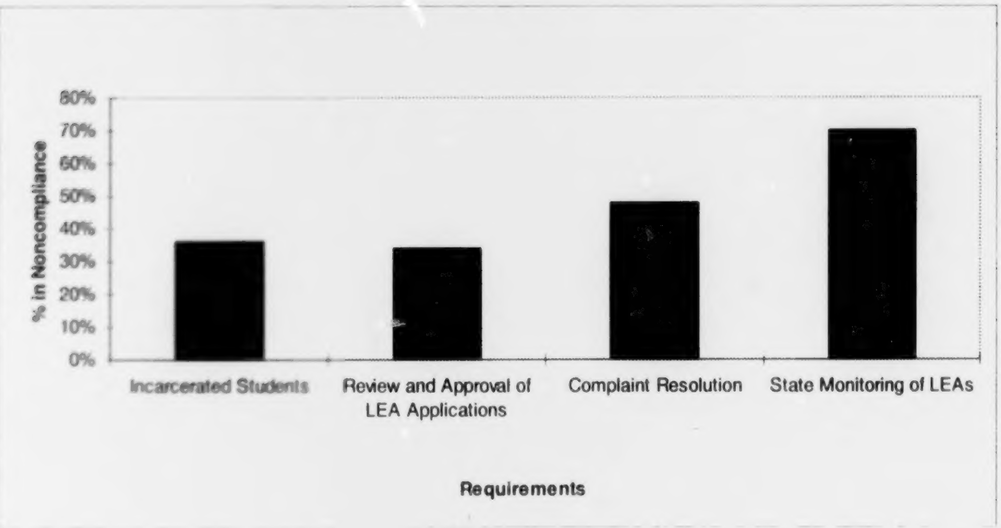
- In New Hampshire, "public agencies A and E, in 16 of 17 records reviewed by OSEP for students 16 years or older, student IEPs did not include a statement of needed transition services or any information related to the provision of transition services...."[159]

v General Supervision

The general supervision of the implementation of IDEA Part B requirement means that states must ensure the development and use of mechanisms and activities in a coordinated system to (1) ensure the states' mechanisms for monitoring compliance with FAPE, LRE, and other IDEA requirements are coordinated and result in the correction of identified deficiencies; (2) ensure that educational and support services are provided to eligible students involved in juvenile and adult detention and correctional facilities, state operated programs (i.e., schools for the developmentally disabled, blind, or deaf), and out-of-district placements; and (3) ensure appropriate and timely service delivery based on interagency coordination and assignment of fiscal responsibility. General supervision also ensures that decision-making regarding these mechanisms and activities is based on collection, analysis, and utilization of data from all available sources (i.e., complaint investigations and resolutions, due process determinations, mediation agreements, court decisions, etc.). Some of the monitoring reports during the period of time under study treat all of these issues as part of general supervision, while others do not.

OSEP found 45 states (90%) failed to ensure compliance with general supervision requirements. Specific general supervision requirements and the percentage of states out of compliance are illustrated in the following chart:

Chart 11: State Noncompliance with General Supervision Requirements



(a)

Incarcerated Students

States must ensure that all individuals with disabilities ages three through 21 are identified, located, evaluated, and provided FAPE.

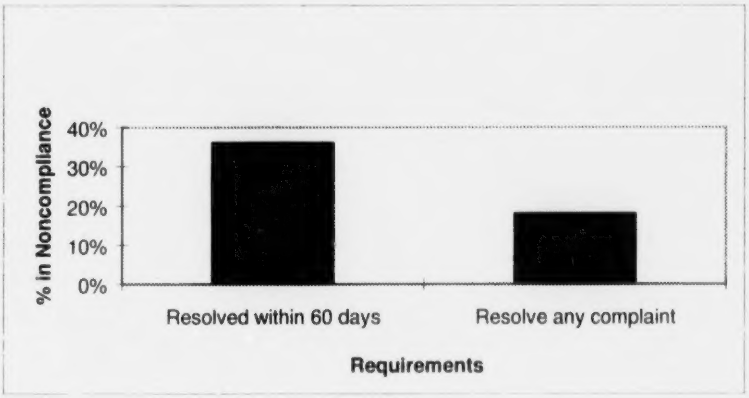
DoED found 18 states (36%) failed to ensure compliance with these requirements, including the following example:

- "California Department of Corrections administrators responsible for educational programs in correctional facilities cited a recent study by that Department estimating that there are 6500–8500 youth with disabilities between the ages of 16 and 22 in the Department's facilities who would be eligible for special education and related services under current California law. They stated that the Department of Corrections currently offers adult basic education and literacy programs to assist inmates in attaining a high school diploma or high school graduation equivalency diploma, and provides adult literacy offerings, but that special education services are not currently available in any of the 29 facilities that house youth between 16 and 22."[160]

(b) Complaint Resolution

OSEP found 24 states (48%) failed to ensure compliance with the complaint resolution requirements. These requirements and the percentage of states out of compliance are illustrated in the following chart:

Chart 12: State Noncompliance with Complaint Resolution Requirements



(i) Resolved within sixty days

Unless exceptional circumstances exist with respect to a particular complaint, states must resolve complaints within 60 calendar days.

DoED found 18 states (36%) failed to ensure compliance with the complaint time line requirement. Moreover, states sometimes exceed the mandated time line for large numbers of complaints. For example,

- In Minnesota, "...MDE [Minnesota Department of Education] did not resolve 58 of the 100 complaints, received during the 1993–94 school year, within 60 days...."[161]
- "Based on a review of the Pennsylvania Department of Education's [PDE's] complaint log for the period beginning January 1, 1991, and ending December 31, 1992, OSEP finds that 512 complaints were filed with PDE, and that in 168 cases PDE did not investigate

and resolve the complaints within 60 calendar days after they were filed. OSEP reviewed a sample of 16 complaint files where PDE exceeded the 60-day time limit and found that 14 of those files did not contain documentation of an extension due to exceptional circumstances with respect to a particular complaint."[162]

(ii) Resolve any complaint

States must resolve every allegation in each complaint.

DoED found nine states (18%) failed to ensure compliance with this requirement. Some states have refused to investigate certain types of complaints. The effect of the complaint limitations imposed by some states has been to force parents either to drop the issue or to hire attorneys to represent their children in due process hearings. Some examples include the following:

- In Kansas, "KSBE has no written policy or guidelines outlining its procedures for conducting complaint investigations. KSBE officials informed OSEP that KSBE does not issue a report outlining its findings when the complaint involves 'IEP team decisions.' IEP team decisions are defined by KSBE to include appropriateness of identification or placement decisions, or appropriateness of decisions involving types and amount of services. KSBE limits its complaint resolution to procedural issues alleging state or federal violations, such as whether the district is providing the type and amount of services listed on an IEP or whether the service providers meet specific state or federal criteria. When KSBE determines that a complaint is substantive rather than procedural, the parents are contacted, usually via phone, and advised that their appropriate avenue of relief is through a due process hearing. KSBE officials stated that records of requests for complaint investigation that are denied are not kept by KSBE. In the file of one complaint, OSEP found the following notation: 'This is not an issue which can be adjudicated through the formal complaint process, as the State Department of Education will not substitute its judgment for that of the IEP team. Therefore, no corrective action is required pursuant to this issue.'"[163]

- In North Dakota, "OSEP found that in one complaint the issues raised by the parent regarding the provision of special education services for his daughter were investigated as if there were the possibility of a systemic problem within the unit and district policies and procedures that may have affected all children receiving special education services. Further, the written report addressed findings related to general policies affecting all children with disabilities rather than the individual circumstances of the complainant. Therefore, there was no investigation and resolution of the specific allegations of the complaint."[164]

The effect of the illegitimate complaint limitations imposed by some states has been to force parents either to drop the issue, or to hire attorneys to represent their children in due process hearings.

(c) State Monitoring

OSEP found 35 states (70%) failed to ensure compliance with the state monitoring requirements. These requirements and the percentage of states in noncompliance are illustrated in the following chart:

Chart 13: State Noncompliance with State Monitoring Requirements

Requirement	% of States Out of Compliance	Number of States Out of Compliance
Method of Determining Compliance		
Lacked methods to determine compliance with some requirements	44	22
Lacked complete methods	38	19

Requirement	% of States Out of Compliance	Number of States Out of Compliance
Effective Method for Identifying Deficiencies		
Lacked effective methods for identifying deficiencies	42	21
Correction of Deficiencies		
Failure to ensure correction of deficiencies	56	28

(i) Method/completeness of method to determine compliance

States must adopt proper methods to monitor public agencies responsible for carrying out special education programs.

OSEP found 22 states (44%) lacked methods to determine compliance with some requirements, and 19 states (38%) lacked complete methods, including the following examples:

- *No method to determine compliance*: "...OSEP reviewed AZDE's [Arizona Department of Education's] monitoring procedures document, *Monitoring for Effectiveness of Compliance —Master Guide*, the *Collaborative Program Review* manual, and all other monitoring procedures and materials, and finds that the procedures that were in effect at the time of OSEP's visit did not include a method to determine compliance regarding the following requirements: **§300.571**—Consent for release of confidential information, **§300.540**—Additional team members—SLD."[165]

- *Incomplete methods to determine compliance*: "...**§300.300—FAPE—Extended School Year services (ESY)** - AZDE's monitoring procedures contain an element at 5.C.5.v that requires that "the IEP shall include consideration for extended school year services," and monitors are directed to review the IEP to determine if ESY services have been considered. There are no guidelines for determining the need for ESY and, in some cases, documentation on the IEP is limited to checking "yes" or "no" in response to the provision of ESY services. As a result, AZDE's method does not enable monitors to determine if the decision about the need for ESY is made on an individual basis at the IEP meeting, rather than on the category of disability or the program in which the student is enrolled."[166]

(ii) Effective method for identifying deficiencies

States must use proper methods to monitor public agencies responsible for carrying out special education programs.

OSEP found that 21 states (42%) lacked effective methods for identifying deficiencies. The methodology OSEP has used to make findings of noncompliance in this area has been to monitor public agencies recently monitored by the SEA. Findings are made if OSEP finds noncompliance with requirements that the SEA missed in its monitoring effort. For example,

- "Although the Virginia DOE's [Department of Education's] monitoring instruments include elements that address all of the Part B requirements regarding placement in the least restrictive environment, OSEP found that VADOE's monitoring procedures had not been fully effective in determining compliance with all of those requirements. OSEP identified deficiencies in three agencies regarding placement in the least restrictive environment that VADOE did not identify when it conducted its most recent review of those agencies."[167]

Occasionally findings of noncompliance with the requirement to have effective methods for identifying deficiencies are based upon a failure to monitor districts regularly:

- In Texas, "[d]uring the 1992–93 through the 1995–96 school years, Texas monitored 108 of its 1,065 districts. Only districts that volunteered to participate in the pilot were reviewed using the Results Based Monitoring system. With the exception of a few follow-up reviews resulting from previous comprehensive monitoring reviews, TEA's comprehensive cyclical monitoring was discontinued after the 1991–92 school year. As a result, 541, roughly half of Texas's districts, received only one visit between the 1986–87 and 1995–96 school years. Two-hundred five of these districts had not been monitored in eight or more years."[168]

(iii) Correction of deficiencies

States must adopt and use proper methods for the correction of deficiencies in program operations that are identified through monitoring.

OSEP found that 28 states (56%) had failed to ensure the correction of deficiencies identified through their monitoring processes. OSEP's methodology on this issue has been to visit agencies that the SEA had recently monitored, had made findings of noncompliance, and had verified that corrective actions were performed. Findings were made by OSEP if it discovered continuing noncompliance with the requirement at issue in the agency visited. On occasion, OSEP had discovered that one of the reasons for the continuing noncompliance was that the SEA had approved corrective actions that were inadequate to remedy the noncompliance. For example,

- "...OSEP found in May 1995 that agencies A, C, D, and F were failing to complete a number of pre-placement evaluations within the state's 60 school day standard, although ISBE [Illinois State Board of Education] had found this deficiency in agency A in 1993, agency C in 1990, agency D in 1988, and agency F in 1989, and required each agency to correct the identified deficiencies...."[169]

- "OSEP noted in monitoring documents maintained by the Indiana Department of Education (IDE) that it had not ensured that subsequent to districts being monitored, the necessary actions to correct identified deficiencies were implemented by public agencies, nor had IDE ensured that noncompliant practices were discontinued. ...OSEP found similar deficiencies in public agencies that IDE had monitored, identified deficiencies, and subsequently verified that corrective actions had occurred. In addition, some deficiencies in agencies monitored by OSEP during its 1992 monitoring visit reappear in this Report. IDE had previously provided written assurances and documentation that deficiencies identified by OSEP in these agencies had been corrected."[170]

- "Both OSEP and LDE [Louisiana Department of Education] identified some of the same noncompliance activities regarding LRE in agencies B, C, D, and E.... In two instances the corrective action plan directed the LEA to provide in-service training to staff and to allow for more opportunities for students to interact with nondisabled peers. These activities were completed, but some students continue to lack any opportunities to participate with nondisabled students for academic, nonacademic, or extracurricular activities. In one instance the facility was to develop an interagency agreement. This was accomplished, but the placement process continues to disallow individual determinations of the maximum extent to which students can be educated with nondisabled students."[171]

- In California, OSEP noted that "...many deficiencies identified in agency F in CDE's [California Department of Education's] 1993 review and OSEP's 1991 review were uncorrected. CDE required agency F to submit corrective action materials in the form of completed compliance resolutions or compliance agreements after its 1993 review. ...CDE approved all compliance resolution materials.... The corrective actions submitted by agency F and approved by CDE, required agency F to change its policies and procedures to make them consistent with state and federal requirements, but did not require training or other procedures to ensure that practice was changed or documentation to ensure that deficiencies had been corrected on an individual and/or systemic basis. ...CDE also conducted a follow-up visit required by the OSEP corrective action plan. CDE focused its follow-up on deficiencies identified by OSEP in its 1992 Report and found that agency F had corrected these findings. CDE's follow-up review, however, only confirmed that public agencies had *established* policies and procedures that were consistent with the requirements...; CDE did not investigate whether public agencies *implemented* these requirements, and OSEP found as part of its 1995 review that agency [F] continued to implement practices that were *not* consistent with these requirements."[172]

(iv) Limitations of monitoring findings on the compliance of state monitoring systems

Federal monitoring findings on state monitoring should be regarded as low estimates of the number of states that have not complied with the state monitoring requirements. In each of the following examples, the federal monitoring reports appeared to contain enough information and analysis to support findings of noncompliance with state monitoring requirements, yet none expressed a clear-cut finding of noncompliance.

- In its 1997 Alaska monitoring report, OSEP made the following determination:

> "...AKDE [Alaska Department of Education] monitors for this requirement [FAPE—related services] by reviewing current IEPs..., and verifying that services are implemented as written on the IEP, but ***does not have a method to determine how decisions are made regarding provision of needed related services***. OSEP also reviewed the most recent monitoring reports issued by AKDE for each of the public agencies to be visited. OSEP determined that AKDE did not make any findings with regard to the provision of related services...in any of these agencies."[173]

OSEP, however, had found noncompliance with this requirement in three agencies in Alaska, thus providing the basis for a finding of noncompliance concerning the effectiveness of the method for identifying deficiencies requirement. Yet OSEP did not state such a finding in its Alaska report.

- In Alabama, OSEP made findings of LRE noncompliance in four agencies; the Alabama SEA had made such findings in only one of these agencies.[174]

Again, however, OSEP did not state a finding of noncompliance concerning the effectiveness of the method for identifying deficiencies.

- In addition, in the FAPE section of its Maine report OSEP noted the following:

> "In its 1994 monitoring report, OSEP cited MDOE [Maine Department of Education] for monitoring procedures that did not always result in the identification of deficiencies regarding the provision of related services. The specific related services addressed in this finding were psychological counseling and testing services. MDOE was required to revise its monitoring procedures, and take other action to ensure the provision of related services, including psychological services, needed by the child in order to benefit from special education. However, MDOE did not make findings regarding the availability and provision of psychological counseling in any of the monitoring reports for agencies A, B, and G, the agencies in which OSEP identified deficiencies in the 1996 monitoring visit. Agency A was monitored by MDOE in 1994, prior to the issuance of OSEP's monitoring report, and the subsequent revisions to the monitoring procedures. Agencies B and G were monitored in 1995 and 1996, after the revision of the monitoring documents...."[175]

Yet OSEP did not state a finding of noncompliance in the area of effectiveness of the method for identifying deficiencies in its 1997 Maine report.

- Although in the FAPE section of its South Carolina report, OSEP pointed out the following, again no clear-cut finding of noncompliance with state monitoring requirements was stated:

> "Although SCDE's [South Carolina Department of Education's] monitoring procedures require that monitors verify through interview with teachers, related services providers, and parents that the related services specified in the student's IEP are being provided, *OSEP found this process ineffective*. Monitoring documents maintained by SCDE showed that interviews with teachers and related services providers, as required by SCDE's monitoring procedures, were not always conducted by SCDE monitoring staff to confirm that related services are provided based on the student's IEP."[176]

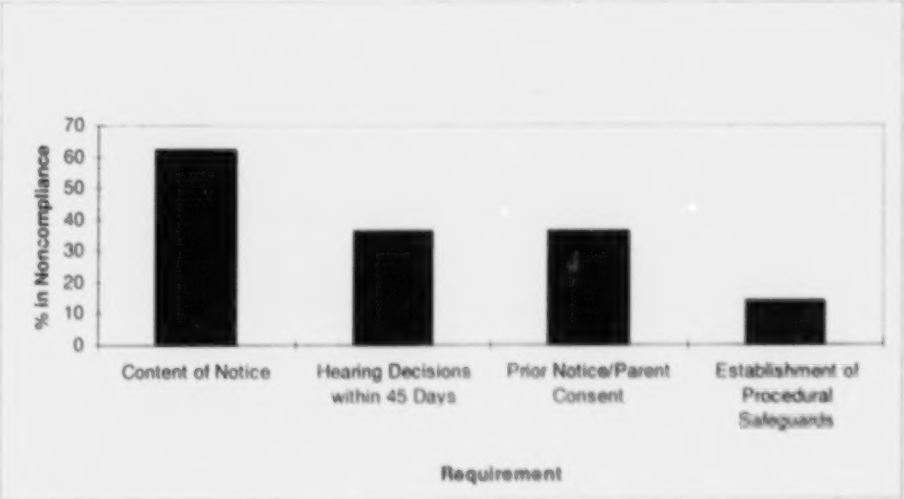
- Finally, OSEP noted in its Tennessee report, concerning pre-placement evaluations, that the SEA made findings of noncompliance in two agencies, and verified corrective actions, yet "its monitoring procedures have not effectively ensured that agencies discontinue noncompliant practices."[177] But OSEP did not make a finding of failure to correct identified deficiencies in its Tennessee report.

The reader will note the similarities between these examples and earlier examples where OSEP made actual findings of noncompliance in state monitoring. Although OSEP later reported it had required corrective actions in each of these instances, it was puzzling that OSEP also had not made clear findings of noncompliance in Alaska, Alabama, Maine, South Carolina, and Tennessee.

(v) Procedural safeguards

Procedural safeguards ensure that parents are notified about and have access to due process. OSEP found that 39 states (78%) had failed to ensure compliance with the procedural safeguards requirements. Specific procedural safeguards requirements and the percentage of states in noncompliance are illustrated in the following chart:

Chart 14: State Noncompliance with Procedural Safeguard Requirements



(vi) Hearing decisions within forty-five days

Unless a specific extension of time is granted by a hearing officer, final decisions in hearings must be reached and copies mailed to the parties no later than 45 days after the receipt of the request for the hearing.

OSEP found that 18 states (36%) had failed to ensure compliance with this requirement. Such violations can result in undue delays in students receiving appropriate services or placements. For example,

- In Illinois, "OSEP reviewed the decisions and Illinois State Board of Education files for 11 randomly selected due process hearings (each of which was requested between March 1993 and January 1994), and found that the decision in each of the 11 hearings was reached more than 45 days after the hearing was requested. There was no documentation of a time line extension for seven of those hearings, and it appeared from the files for the other four hearings that some extension of time had been granted, but OSEP could not determine whether a decision had been reached and mailed to the parties within specific extensions of the time line."[178]

Sometimes violations of the 45-day requirement result in delays that can waste a significant portion of a school year for the students.

- In Georgia, "OSEP found that in 12 of the 28 requests for a due process hearing, the 45-day time line was exceeded, and there were no requests for extensions recorded in the log prepared by Georgia Department of Education. The time lines in these cases exceeded the 45-day time lines in amounts ranging from seven days to four months and 27 days. The log noted that of the 16 requests for which extensions were recorded, 10 were extended for a specific period of time. The log entries for the other six extensions did not include a specific time limit, and all were resolved from 56 to 169 days beyond the 45-day time line requirement."[179]

(vii) Protection in evaluation

Re-evaluations of students with disabilities must occur within three years of prior evaluations. Initial evaluations must comply with time line standards set by state regulations.

OSEP found that 19 states (38%) had failed to ensure compliance with the protection in evaluation requirements.[180] For example,

- In Texas, "OSEP interviewed administrators and agency officials responsible for coordination and conducting evaluations in agencies A, B, H, J, and K to determine whether all students with disabilities are evaluated at least every three years, or more often if warranted or requested by the child's parent or teacher. These officials acknowledged that some evaluations were delayed by three to twelve months beyond the three-year time line. They reported to OSEP that there was a waiting list of students in each of these agencies whose re-evaluations were overdue. Administrators from agencies A and H informed OSEP that at least 100 students' re-evaluations were delayed. Administrators in agency B explained to OSEP that 1,244 overdue re-evaluations exceeded the three-year time limit. An agency J administrator explained to OSEP that of the three regions in the district, the northeast region had 265 overdue re-evaluations for students with disabilities that exceeded the three-year time limit."[181]

- In Rhode Island, "OSEP reviewed student files from six agencies and found that some student re-evaluations were from one month to five years overdue. Agency D provided OSEP with a list of students whose re-evaluations were overdue. OSEP reviewed data for 77 of the students on the list: 10 were two to three years overdue, 19 were one to two years overdue, and 48 were a year or less overdue. A special education administrator in agency E told OSEP that evaluations were seriously delayed. Of 251 re-evaluations, 151 were overdue, some by as much as five years."[182]

- "OSEP reviewed documentation on initial evaluations and interviewed staff in agencies visited. These agencies provided documentation on initial evaluations completed during the 1993–94 and 1994–95 school years. That documentation showed delays in evaluations conducted by public agencies that ranged from 10 instructional days to as many as 390 instructional days (e.g., greater than two calendar years) in the following agencies:

Agency B—63 of 400 evaluations were overdue;
Agency C—166 of 377 evaluations were overdue;
Agency E—49 of 600 evaluations were overdue;
Agency F—161 of 806 evaluations were overdue;
Agency G—68 of 386 evaluations were overdue.

OSEP collected documentation from agencies B, C, D, E, F, and G on re-evaluations conducted during the 1994–1995 school year. In interviews, administrators and agency personnel responsible for conducting these evaluations reported that the following delays were the result of staff shortages and the subsequent decision to give priority to initial evaluations over triennial re-evaluations.

Agency B—180 of 579 evaluations overdue
Agency E—68 of 386 evaluations overdue
Agency G—340 of 380 evaluations overdue

In agencies E and G, these re-evaluations were, in some cases, more than a year overdue."[183]

- "[I]n one district in New York, DoED reviewed a district report and found that of 5,743 students referred for assessments during the 1992–93 school year, 3,467 (60%) were overdue."[184]

e. Data Quality Issues Raised by the Monitoring Reports

At the start of this section, several problems regarding the standards used in assessing the federal monitoring findings were laid out, pointing to the need for some fundamental changes in monitoring state compliance with IDEA. Issues of data quality will also play a pivotal role affecting collection and use of data under the new monitoring system. First, the 1997 reauthorization of IDEA placed a strong emphasis on results for students with disabilities and performance measures as indicators of the states' success in meeting the goals of IDEA. This priority emerged in part due to the second factor: the growing impact of the Government Performance and Results Act of 1993 (GPRA).[185] Aimed at improving the effectiveness of federal programs and public accountability, GPRA required federal agencies to prepare a five-year strategic plan and annual performance plans beginning with fiscal year 1999. Agency performance reports were also required, and the first report on FY 1999 is due in March 2000. The public accountability envisioned by GPRA extends to state or local government entities receiving federal funding. They are responsible to their respective funding agencies for GPRA compliance.

Under earlier provisions of IDEA, states had reported annually on their progress in implementing IDEA, but with significantly fewer quantitative data reporting requirements. Now states will have to report on all assessments of students with disabilities in the same detail and with the same frequency as on assessments of nondisabled students, for example. In order to meet the new reporting requirements, states will need to develop statewide goals, standards, and assessment systems for students with disabilities. States will also have to define the performance indicators and measures for determining if the performance standards are being met and have the systems in place to collect the data.

OSEP indicates that while many states have data collection and reporting systems in place, the systems vary tremendously. There is currently no requirement in IDEA for a standardized approach to data reporting, even for federal reporting purposes. OSEP has monitored state compliance based in large part on the type and quality of compliance-related data available in each state. Only some elements of this data are prescribed by law. The limited availability of assessment and compliance data that are both adequate and appropriate affects states' ability to ensure that school districts are providing FAPE, LRE, procedural safeguards, etc. to children with disabilities.

There is a need to have the right data available for assessing compliance with state and federal program requirements, while minimizing the burden on resources in collecting, analyzing, and reporting on that data. A comprehensive reassessment of all data required to evaluate the many state and federal education programs will help accomplish this. For example, the data elements needed to measure compliance with IDEA and improved educational results for children with disabilities should be identified in consultation with all stakeholders, including the students, their parents, public agencies, and policy-makers. These IDEA data elements should be compared with the complete list of data elements required for evaluating all of the various federal and state programs to determine where existing data sources in each state can be drawn upon, redundant data eliminated, and missing data developed.

OSEP's leadership is critical to helping states build and maintain the efficient data systems they need to assess their own performance in meeting their responsibilities under IDEA. OSEP can bring together the stakeholders and facilitate the process of identifying the appropriate data elements for assessing IDEA compliance and educational results indicators. Because reliable data is vital to effective general supervision by the states, the Department of Education also should provide technical assistance to them for developing comprehensive, streamlined data systems.

f. Findings and Recommendations

Finding # III B.1A

After 25 years, all states are out of compliance with IDEA to varying degrees.

An analysis of the most recent federal monitoring report available for each state (from 1994–1998) indicated that no state had carried out its responsibilities to ensure compliance with all the requirements of Part B. While the degree of noncompliance with any given requirement (based on number and seriousness of infractions) varied among the states, many states had failed to ensure compliance with a significant number of requirements. Of the seven areas analyzed, 24 percent, or 10 states, had failed to ensure compliance in five areas; 24 percent, or 10 states, had failed to ensure compliance in six areas, and 12 percent, or six states, had failed to ensure compliance in seven areas. Four percent, or two states, had failed to ensure compliance in only one area.

Finding # III B.1B

More than half of the states have failed to ensure full compliance with the following areas: general supervision (90%, or 45 states); transition (88%, or 44 states); free appropriate public education (80%, or 40 states); procedural safeguards (78%, or 39 states) and least restrictive environment (72%, or 36 states).

Other areas in which states failed to ensure compliance are IEPs (44%, or 22 states) and protection in evaluation (38%, or 19 states).

Recommendation III B.1A

Congress should ask the General Accounting Office to conduct a study of the extent to which SEAs and LEAs are ensuring that the requirements of IDEA in the areas of general supervision, transition, free appropriate public education, procedural safeguards, and least restrictive environment are being met. In addition, the Department of Education should conduct regular independent special education audits (fiscal and program) initiated by the DoED Office of Inspector General (OIG). The purpose of the audits would be to examine whether federal funds granted under IDEA Parts B and D (State Program Improvement Grants) have been and are being spent in compliance with IDEA requirements. These audits should be a supplement to OSEP's annual compliance monitoring visits, and the audit results should be in DoED's annual report to Congress. To the extent that the DoED OIG lacks the subject matter expertise to conduct program audits under IDEA, the OIG should contract with independent entities having such expertise when a program audit is necessary.

Recommendation # III B.1B

Congress should fund an independent consortium of nongovernment entities in every state to develop and conduct independent monitoring and to produce independent reports to the President and Congress on the status of each state's compliance with IDEA at the local level.

Members of the nongovernment consortium should include, but not be limited to, the state's PTI, P&A, and IL centers.

While parents of children with disabilities and students and adults with disabilities participate in the federal monitoring process, they have no independent means for assessing the extent or quality of state compliance, for determining why state failure to ensure compliance persists, and for communicating these findings to the President and Congress. They need to be able to provide reliable and regular assessments of their state's compliance with IDEA, as well as a realistic picture of the toll of noncompliance on children and families in their state, to federal and state leaders, and to the public at large.

Finding # III B.2

OSEP did not have an explicit objective standard for assessing whether noncompliance with IDEA requirements found in any given state was systemic.

OSEP staff indicated that a state was found noncompliant with a given requirement only if the failure to ensure compliance was "systemic," (i.e., observed by monitors "with some frequency").[186] For example, a finding of noncompliance could have meant that out of 10 schools monitored, anywhere from three to 10 had failed to ensure compliance with a given requirement. There was no established standard (quantitative or qualitative) by which OSEP made a determination that noncompliance was systemic.

Recommendation # III B.2A

The Department of Education should establish and use national compliance standards and objective measures for assessing state progress toward better performance results for children with disabilities and for achieving full compliance with IDEA.

Recommendation # III B.2B

OSEP should work with the states, students with disabilities, their parents, and other stakeholders to identify the core data elements needed to assess whether compliance standards are being met and performance results for children with disabilities are improving statewide.

Recommendation # III B.2C

OSEP should closely monitor state progress in developing reliable data collection and reporting mechanisms (qualitative and quantitative) that adequately and accurately assess both state compliance and performance results for children with disabilities. This recommendation coincides with a central goal of the 1997 IDEA reauthorization to focus IDEA implementation more closely on objective performance standards and results measures.

Recommendation # III B.2D

OSEP should make as its own compliance monitoring priority for the next five years the assessment of state progress toward creating reliable and comprehensive data (quantitative and qualitative) to support effective state compliance monitoring capabilities.

Finding # III B.3

OSEP's monitoring reports did not clearly indicate which IDEA requirements were monitored, why they were monitored, and what the compliance status was.

OSEP reported placing "a strong emphasis on those requirements most closely associated with positive results for students with disabilities,"[187] and appeared to monitor a stable core of requirements in every state. It used information gathered during the pre-site process to help determine what to monitor.

Federal monitoring reports, however, did not display all the requirements monitored, nor did they consistently specify the requirements with which the state appeared to comply, based on the sample of districts, student files, interviews, and state policies and procedures, as well as state monitoring documents reviewed. In some cases, requirements with which the state appeared to comply were mentioned in report cover letters, and in other cases they were not. Therefore, it was not always possible to determine all the requirements monitored and the compliance status of each.

Recommendation # III B.3

All OSEP monitoring reports should consistently state what requirements were monitored, the rationale for choosing those requirements, which ones were in compliance, and which ones were out of compliance.

Such reporting would have enabled a comparison between reports and over time. It also would have enabled an understanding of where states were determined definitively to be in compliance, which might have offered opportunities for positive acknowledgment.

Finding # III B.4

OSEP monitoring did not include observation of students; rather, it involved collecting and reading documents and interviewing education personnel.

In the experience of OSEP staff, observing students consumed a great deal of time and often did not yield enough conclusive data to make clear-cut compliance determinations. Many parents and advocates criticized the monitoring process, however, as one that focused too much on talking with education personnel and reading documentation. Their concern was that this approach did not provide an adequate measure of the extent to which students were being appropriately served.

Recommendation # III B.4A

OSEP's monitoring process in each state should routinely include an ethnically diverse sample of children who are matched to their records and who are interviewed, along with their parents and service providers, for a determination of whether the law's requirements are being met on their behalf.

Routinely including interviews with children from ethnically diverse backgrounds, their parents, and service providers in the monitoring process would have provided a more grounded understanding of the states' compliance picture.

Recommendation # III B.4B

OSEP should review the files of more students placed in out-of-state residential facilities, and increase the number of compliance monitoring site visits to separate public and private facilities, as well as to state schools for students who are deaf or have visual impairments.

Finding # III B.5

A complete historical inventory of all monitoring reports issued for every state is not available, but since 1990 all reports issued have been maintained.

The historical monitoring data in these early reports were crucial to understanding what areas had remained chronically out of compliance and how states had progressed in improving compliance over time. In addition, an analysis of the historical data could have provided insight into the impact of corrective action plans on reducing noncompliance.

Recommendation # III B.5

OSEP should undertake efforts to construct a database with all monitoring reports, corrective action plans, and compliance agreements ever issued by OSEP, to standardize all newly issued reports, plans, and agreements and capture in the database, and to undertake a historical analysis of compliance for each state.

A historical picture of each state's compliance status will greatly inform OSEP's monitoring work and allow for examining trends over time. In addition, it will provide a sense of the persistence of certain problems in particular states.

Finding # III B.6

Important IDEA requirements appeared to be unmonitored or under-monitored

The federal monitoring reports examined from all fifty states showed that compliance with one important requirement appeared not to be monitored, and compliance with another appeared to be under-monitored.

IDEA required states to have "[p]rocedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration."[188] There was no evidence in the texts of the monitoring reports reviewed that compliance with this requirement had ever been monitored.

SEAs are required to "ensure" that public agencies "ensure" that "[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled."[189] In the fifty reports reviewed, OSEP had made findings of noncompliance with this requirement in two states—North Dakota[190] and Utah.[191] Both reports were issued in 1994, the first year of reports reviewed. There was no evidence in the texts of the other monitoring reports reviewed that compliance with this requirement had been monitored.

Recommendation # III B.6

OSEP should ensure that every IDEA requirement is monitored in every state at regular intervals, even if not core requirements or not identified by the state as problem noncompliance areas.

OSEP should develop a method for ensuring that requirements often overlooked in the monitoring process are monitored at regular intervals. The compliance status of states with noncore requirements or requirements rarely identified as problem areas during the pre-site visit (i.e., implementation of promising practices) should be monitored at regular intervals in every state.

Finding # III B.7

OSEP frequently took too long to issue monitoring reports.

For reports issued between 1994 and 1998, the amount of time from the date the monitoring visit ended and the date of the final report was greater than 90 days for 45 states, greater than180 days for 27 states, and greater than 365 days for 12 states. DoED's present policy is to issue the report approximately five to six months (150–180 days) after the on-site visit, but recognizes the need to get the reports out more quickly. OSEP has requested additional staff, and is working on a new strategy to reduce lag time before the release of each monitoring report.

Recommendation # III B.7

OSEP should issue the monitoring report as soon as possible after the site-visit, preferably within 60 days (two months).

OSEP is requesting resources and working on a new strategy to issue the monitoring reports in more timely fashion. An issuance date no later than two months following the end of the end of the monitoring visit should be established.

Finding # III B. 8

The Department has been making monitoring reports available through the Department of Education's web site as soon as they are issued.

The most recent reports (or the report's executive summary) from 27 states have been made available on the OSEP web site. All new reports will be placed there in the future. Placing the reports on the web site will allow timely access for a broad range of stakeholders and a greater awareness of the monitoring issues in each state.

Finding # III B.9

The Department began implementing a new "continuous improvement" monitoring process where the state is a collaborator with the Federal Government and other constituencies to assess the educational success of students with disabilities and to design and implement steps for improvement on an ongoing basis.

Recommendation # III B.9

The Department should conduct a formal assessment of the new continuous improvement monitoring process within the next three years. The assessment should incorporate broad stakeholder input, particularly from students with disabilities and their parents, on the effectiveness of the new process in improving compliance with Part B and improvements in educational results for students with disabilities.

The following section presents an analysis of findings on areas of noncompliance reported in the last three monitoring reports for six states.

6. Persistence of Noncompliance Over Time

This study was concerned with the effectiveness of the monitoring process from 1975 up to 1998. In other words, if areas of noncompliance were pointed out and plans of correction are implemented, one would have expected improvement in the noncompliant area. In order to determine whether or not improvements took place over time, NCD undertook two analyses. First, we analyzed the current monitoring reports to determine how frequently there were citations of previous areas of noncompliance that had not been corrected. Second, we examined several monitoring reports over a span of years in each of six states to determine the extent to which areas of noncompliance were persistent. According to one expert, "[t]he real test of a monitoring process is whether identified deficiencies are corrected."[192]

a. Analysis of Current Monitoring Reports

The most recent monitoring reports of twelve states (24%) indicated continuing areas of noncompliance from previous federal monitoring reports or other compliance-related OSEP activities. The areas of continuing noncompliance were often with requirements that were important to the educational careers of students with disabilities.

- "...[S]everal deficiencies identified in OSEP's 1993 monitoring report do reappear in this Report. Specifically, OSEP continued to find deficiencies in requirements related to ensuring compliance through monitoring, approval of complete local educational agency applications, the provision of a free appropriate public education, and placement in the least restrictive environment."[193]

A "In a few instances [placement in the least restrictive environment, provision of a free appropriate public education, state educational agency monitoring, and complaint management] this Report includes continuing findings that were first noted in the 1991 compliance report."[194]

B "OSEP noted...that many deficiencies identified during OSEP's previous monitoring in April of 1989 continue to exist. Specifically, OSEP found serious deficiencies in requirements related to ensuring compliance through monitoring, complaint resolution, and due process hearings. OSEP also noted significant continuing deficiencies related to placement in the least restrictive environment.... Although the Report contains numerous findings in the nine areas of responsibility..., OSEP notes that the seriousness of the findings described above requires NYSED's [New York State Education Department's] *immediate* attention.

OSEP is extremely concerned about these continuing deficiencies, and notes that NYSED has previously provided documentation to OSEP to verify that many of the deficiencies had been corrected."[195]

C "...OSEP noted...that many deficiencies identified during OSEP's previous monitoring in March of 1988 continue to exist. Specifically, OSEP found serious deficiencies in requirements related to ensuring compliance through monitoring..., and...found that NMSDE [New Mexico State Department of Education] had not implemented revised monitoring procedures that were required and approved by OSEP as part of the corrective action resulting from OSEP's previous monitoring visit. In addition, similar deficiencies continued in the areas of Individualized Education Program development...and a full explanation of procedural safeguards to parents.... ...Although the Report contains numerous findings in the five areas of responsibility..., OSEP notes that the seriousness of the findings described above requires NMSDE's *immediate* attention.

OSEP is concerned about these continuing deficiencies, and notes that NMSDE has previously provided documentation to OSEP to verify that many of the deficiencies had been corrected. With respect to monitoring, OSEP had approved NMSDE's development of a revised monitoring system that met federal requirements on May 4, 1990, but now finds that NMSDE has not implemented this corrective action required by OSEP...."[196]

D "We are concerned about the continuing existence of two findings of deficiency that OSEP first identified in MDE's [Minnesota Department of Education] 1991 compliance report. First, MDE has not implemented a system to ensure that deficiencies it identifies in Minnesota public agencies are corrected in a timely manner. Although MDE had submitted approvable procedures for ensuring correction of public agencies' deficiencies, OSEP finds that MDE had not implemented these procedures. Second, OSEP finds that the MDE routinely violates the federal time line for investigating and resolving complaints. This deficiency was first identified in the 1991 compliance report and continued to exist at the time of OSEP's September 1994 on-site visit. I bring these two areas to your attention because of the serious issue they raise with regard to MDE's ability to exercise general supervisory authority to ensure that all public agencies in the state comply with Part B."[197]

E "OSEP found the following five continuing deficiencies that were first identified in the 1991 Report and for which MASSDE [Massachusetts Department of Education] previously provided documentation to OSEP to verify that the deficiencies had been corrected:

1. MASSDE has not monitored to ensure that deficiencies are identified in public agencies in Massachusetts and are corrected in a timely manner. Although MASSDE submitted appropriate procedures for identifying and ensuring correction of public agencies' deficiencies, OSEP finds that MASSDE has not implemented these procedures.

2. MASSDE has not established procedures to ensure that Part B funds are distributed to...LEAs based on approved applications from those LEAs.

3. MASSDE's procedures for investigating and resolving complaints and conducting due process hearings have not ensured resolution of either within the time lines prescribed....

4. MASSDE has not met its responsibility to ensure that public agencies make placement decisions consistent with the least restrictive environment requirements....

5. MASSDE has not implemented procedures which ensure that annual meetings are held to develop, review, and, if necessary, revise all components in the student's IEP."[198]

- "MDOE [Maine Department of Education] has not exercised its general supervisory authority, to fully correct all of the deficiencies identified by OSEP in the 1994 Monitoring Report. Specifically, although OSEP found these same deficiencies in the 1994 report, OSEP again found the following deficiencies:

(1) Eligible individuals incarcerated in Maine state and local adult correctional facilities have not been located, identified, evaluated, and provided with a free appropriate public education;

(2) Complaint management procedures do not ensure that any complaint that a public agency has violated a requirement of Part B is resolved...;

(3) ...MDOE has not ensured that the provision of a free appropriate public education is not delayed, interrupted, or denied to children...."[199]

F "KDE [Kentucky Department of Education] was cited in OSEP's 1992 monitoring Report for failure to exercise general supervisory responsibility over Department of Corrections educational programs for youth with disabilities, but KDE has yet to provide or establish a system to ensure provision of special education and related services to eligible youth in these facilities. Consequently, KDE has failed to exercise its general supervisory responsibility to implement procedures to ensure that these programs provide special education and related services to youth with disabilities...as required in OSEP's previous corrective action plan."[200]

G "In December 1992, OSEP referred a complaint alleging Part B violations to ISBE [Illinois State Board of Education] for resolution.... ISBE informed the complainants that their complaint was "untimely" and that ISBE would not investigate it because '[ISBE's] complaint procedures require that the violation must have occurred within 180 calendar days of the date the complaint was filed with [ISBE].' In February 1993, OSEP again referred the complaint to ISBE, stating that such a dismissal 'is not consistent with the complaint provisions applicable to [Part B].' In March 1993, ISBE again declined to resolve the complaint, citing the 180-day time limit; explaining that in establishing the 180-day limitations period ISBE adopted the limitations period established by the Office for Civil Rights for complaints filed with that office, and enclosing 'a current copy of [ISBE's] internal procedures which include the 180-day time limit.' In a September 6, 1994, letter, OSEP asked ISBE to advise OSEP within 15 days whether ISBE's current procedures included a time limitation, and—to the extent that ISBE's procedures include any time limitation on the filing of complaints—the specific steps that ISBE will take to revise its procedures, and the time lines for those steps. On September 16, 1994, ISBE responded, stating that it would "revisit" the time line; a further ISBE response of October 4, 1994, confirmed that it 'still set a 180 day time line.'

In preparation for the May 1995 monitoring visit, OSEP requested from ISBE a copy of its procedures for resolving complaints. ...ISBE submitted to OSEP a copy of a document entitled, "Investigation and Resolution of Complaints." Those procedures state that, 'An EDGAR [Education Department General Administrative Regulations] investigation is conducted only on current disputes. An investigation will not be conducted on retrospective or prospective violations.'

Thus, despite clear OSEP directives to ISBE over a more than two-year period that it must revise its complaint resolution procedures to eliminate a time limitation on the filing of Part B complaints, ISBE's procedures continue to exclude complaints that are not 'current.'"[201]

- "OSEP is particularly concerned with the persistence of serious problems in the area of...least restrictive environment. This finding was cited both in the 1993 monitoring report and in the October 1995 letter issued to FLDE [Florida Department of Education] subsequent to OSEP's follow-up visit to FLDE in March of 1995."[202]

- "OSEP noted in its development of this report that some of the deficiencies identified during OSEP's previous monitoring in February of 1989 continue to exist. Specifically, OSEP found deficiencies in requirements related to ensuring compliance through monitoring and implementation of placement in the least restrictive environment. OSEP is concerned about these continuing deficiencies and notes that CSDE [Connecticut State Department of Education] had previously provided documentation and assurances to OSEP to verify that the deficiencies had been corrected and recurrence had been prevented. In this regard, CSDE must take immediate and forceful steps to correct deficiencies throughout the state or risk the imposition of sanctions, including the withholding of federal funds."[203]

- "OSEP is particularly concerned that AKDE [Alaska Department of Education] has not implemented procedures to ensure that eligible persons with disabilities incarcerated in the state's adult correctional facilities are provided a free appropriate public education. This issue was cited as an area of noncompliance in OSEP's 1994 monitoring report to AKDE, however, at the time of OSEP's 1996 monitoring, AKDE had taken no definitive action in this area."[204]

As is clear from the cover letters and reports quoted above, continuing noncompliance appeared in many cases to be the result of an unwillingness on the part of SEAs to implement corrective actions the SEA and OSEP had previously agreed upon, or to follow clear OSEP directives. This finding may not be surprising because OSEP apparently did not begin significant enforcement activities as a result of discovering that these SEAs had not lived up to their corrective action or other commitments.

b. Analysis of Six States Over Time

i. Methodology and Limitations

All reports for a selected group of eleven states, since the beginning of federal special education monitoring efforts, were requested from OSEP.[205] Unfortunately, OSEP did not have a policy of retaining copies of all reports at the time the research for this study was conducted: "...OSEP generally does not keep records regarding IDEA monitoring activities for more than three to five years."[206] Neither did OSEP have an inventory of the reports that they did possess, so it was not possible to pre-determine which states had the most complete set of reports. California, Illinois, New York, Oregon, Texas, and Vermont were ultimately chosen to be studied in depth because there appeared to be a reasonable number of reports available going back in time.

Because OSEP did not consistently display areas of compliance in its reports, as mentioned above, the resulting limitations on this part of the current study were significant. Requirements were chosen for analysis if the most recent report displayed a definite compliance status for it, and if there was at least one earlier report that displayed a definite compliance status for that requirement.[207] It was possible that when a report gave no information about a requirement the state was compliant, that it was a "single cite" instance of noncompliance, or that compliance with the requirement was not monitored at all. These limitations should be kept in mind by the reader.

ii. Six States Over Time

According to OSEP, the six states studied served 1,734,227 students with disabilities ages three to 21 under Part B of IDEA during the 1995–96 school year.[208] Hence, these states served 30.9 percent of the total students served under Part B nationwide.

(a) California

Three monitoring reports from California were analyzed: 1988, 1992, and 1996. As displayed in the following table, and as qualified by the limitations affecting this study, California came into compliance with only one of 10 requirements (10%) over time—the requirement under general supervision, the review and approval of LEA applications. Of the nine that remained noncompliant, seven remained noncompliant for almost eight years, and two for four years.

Table 15: Noncompliance Over Time in California

Requirement	4/6/88	2/11/92	2/5/96
FAPE: Related Services	X	X	X
LRE: Education with Nondisabled/Removal Only When Aids/Services Standard Met	X	X	X
LRE: Nonacademic & Extracurricular	X	X	X
LRE: Placement Based on IEP	X	X	X
General Supervision: Review and Approval of LEA Applications	X	X	C
General Supervision: Complaint Management: Resolved Within 60 Days	NI	X	X
General Supervision: State Monitoring: Method to Determine Compliance	X	X	X
General Supervision: State Monitoring: Effective Method for Identifying Deficiencies	X	X	X
General Supervision: State Monitoring: Correction of Deficiencies	X	NI	X
Procedural Safeguards: Content of Notice	NI	X	X

Key to Tables: X—Noncompliant, C—Compliant, NI—No Information

Although OSEP could not provide the 1980 report, California was apparently monitored in 1980 and 1985 also. At a Congressional hearing, David Rostetter testified about these efforts:

> "In November 1980 OSEP issued a 56-page monitoring report to the state of California. It was clearly the most rigorous effort at enforcement attempted up to that point. Unfortunately, a presidential election resulted in an administration that ordered OSEP to negotiate the findings and 'close out' the issues immediately. Not surprisingly, these same deficiencies again were found during the September

> 1985 on-site review of California. Prior to the visit, the Deputy Assistant Secretary advised me to 'avoid making findings' as a result of the California review. This 'advice' was never heeded. *As of this date, the findings in the November 1980 letter remain unaddressed. Since that time over half a billion dollars in federal funds has been awarded to California in the presence of clear evidence of noncompliance.*"[209]

It is impossible to tell from the information provided whether some of these requirements have been in noncompliance since 1980.

(b) Illinois

The 1991 and 1996 Illinois monitoring reports were analyzed. As displayed in the following table and as qualified by the limitations affecting this study, Illinois came into compliance with six of 14 requirements (43%) over time. The eight with which the state remained noncompliant have been in this status for almost five years.

Table 16: Noncompliance Over Time in Illinois

Requirement	5/23/91	2/21/96
FAPE: Related Services	X	X
FAPE: Provision of Special Education/Program Options Available	X	X
LRE: Education with Nondisabled/Removal Only When Aids/Services Standard Met	X	X
LRE: Nonacademic & Extracurricular	X	X
LRE: Placement Based on IEP	X	X
LRE: Continuum Available to Extent Necessary	X	X
IEPs: Content	X	C
IEPs: Meetings	X	C
General Supervision: Review and Approval of LEA Applications	X	C
General Supervision: State Monitoring: Effective Method for Identifying Deficiencies	X	C

Requirement	5/23/91	2/21/96
General Supervision: State Monitoring: Correction of Deficiencies	X	X
Procedural Safeguards: Hearing Decisions Within 45 Days	X	X
Procedural Safeguards: Content of Notice	X	C
Procedural Safeguards: Establishment of Procedural Safeguards	X	C

(c) New York

Reports from 1983, 1990, 1994, and a follow-up report from 1996 were analyzed for New York. As displayed in the following table and as qualified by the limitations affecting this study,[210] in its most recent comprehensive monitoring report (8/16/94), New York came into compliance with none of the 15 requirements (0%) with which it had been previously noncompliant. Five of these requirements had been noncompliant for more than 10 years, and 10 remained noncompliant for more than four years. Of the 11 requirements with which the state was found noncompliant in the follow-up report (9/10/96), two had been noncompliant for more than 12 years, three for six years, and six for two years.

Table 17: Noncompliance Over Time in New York

Requirement	12/14/83	10/17/90	8/16/94	9/10/96*
FAPE: ESY	X	X	X	NI
FAPE: Provision of Special Education/Program Options Available	NI	NI	X	X
LRE: Education with Nondisabled/Removal Only When Aids/Services Standard Met	X	X	X	X
LRE: Nonacademic & Extracurricular	NI	X	X	X
LRE: Continuum Available to Extent Necessary	NI	X	X	X
IEPs: Content	X	X	X	NI
IEPs: Meetings	NI	X	X	NI

Requirement	12/14/83	10/17/90	8/16/94	9/10/96*
Transition: Notice	NI	NI	X	X
Transition: Statement of Needed Services	NI	NI	X	X
Transition: Meeting Participants	NI	NI	X	X
General Supervision: Incarcerated Students	NI	X	X	NI
General Supervision: Review and Approval of LEA Applications	NI	X	X	NI
General Supervision: Complaint Management: Resolved Within 60 Days	X	NI	X	X
General Supervision: State Monitoring: Method to Determine Compliance	NI	X	X	NI
General Supervision: State Monitoring: Effective Method for Identifying Deficiencies	NI	X	X	NI
General Supervision: State Monitoring: Correction of Deficiencies	NI	X	X	NI
Procedural Safeguards: Hearing Decisions Within 45 Days	NI	NI	X	X
Procedural Safeguards: Content of Notice	NI	X	X	X
Procedural Safeguards: Prior Notice/Parent Consent	X	NI	X	NI
Procedural Safeguards: Establishment of Procedural Safeguards	NI	X	X	NI
Protection in Evaluation	NI	NI	X	X**

*Follow-up Report **Report notes significant improvement

(d) Oregon

Reports from 1988, 1993, and 1998 were analyzed for Oregon. As displayed in the following table and as qualified by the limitations affecting this study, Oregon came into compliance with six of 10 requirements (60%) over time. Of the four that remained noncompliant, two had been noncompliant for more than nine years, and two for more than four years.

Table 18: Noncompliance Over Time in Oregon

Requirement	7/5/88	11/15/93	1/8/98
FAPE: ESY	NI	X	X
FAPE: Related Services	NI	X	X
LRE	X	X	C
General Supervision: Review and Approval of LEA Applications	X	X	C
General Supervision: Complaint Management: Resolved Within 60 Days	NI	X	C
General Supervision: Complaint Management: Resolve Any Complaint	X	NI	C
General Supervision: State Monitoring: Effective Method for Identifying Deficiencies	X	X	X
General Supervision: State Monitoring: Correction of Deficiencies	X	X	X
Procedural Safeguards: Hearing Decisions Within 45 Days	NI	X	C
Protection in Evaluation	NI	X	C

(e) Texas

Reports from 1987, 1993, and 1997 were examined for Texas. As displayed in the following table, and as qualified by the limitations affecting this study, Texas came into compliance with only two of nine requirements (22%) over time. Of the seven which remained noncompliant, six remained noncompliant for more than 10 years, and one for more than four years.

Table 19: Noncompliance Over Time in Texas

Requirement	3/11/87	2/26/93	9/16/97
FAPE: Related Services	NI	X	X
LRE: Education with Nondisabled/Removal Only When Aids/Services Standard Met	X	X	X
LRE: Nonacademic & Extracurricular	X	X	X
LRE: Placement Based on IEP	X	X	X
LRE: Continuum Available to Extent Necessary	X	X	X
General Supervision: Review and Approval of LEA Applications	X	X	C
General Supervision: State Monitoring: Effective Method for Identifying Deficiencies	X	NI	X
General Supervision: State Monitoring: Correction of Deficiencies	X	X	X
Procedural Safeguards	X	X	C

(f) Vermont

Reports for 1989, 1993, and 1996 were analyzed for Vermont. As displayed in the following table and as qualified by the limitations affecting this study, Vermont came into compliance with three of eight requirements (37.5%) over time. Of the five that remained noncompliant, one remained noncompliant for seven years, and four for more than two years.

Table 20: Noncompliance Over Time in Vermont

Requirement	2/24/89	9/17/93	2/8/96
FAPE: Related Services	NI	X	X
FAPE: Provision of Special Education/Program Options Available	NI	X	X
IEPs: Content	X	X	X
General Supervision: Incarcerated Students	NI	X	X
General Supervision: Review and Approval of LEA Applications	X	X	C
General Supervision: Complaint Management	NI	X	C

Requirement	2/24/89	9/17/93	2/8/96
General Supervision: State Monitoring: Correction of Deficiencies	NI	X	X
Protection in Evaluation	NI	X	C

c. Findings and Recommendations

Finding # III B.10

Some significant state noncompliance areas have changed over time.

At the start of the federal monitoring process, large numbers of children with disabilities were routinely and inappropriately placed in separate educational settings in many states. Recent findings have shown that while such routine inappropriate placements have decreased in many states, a lack of adequate supports to children placed in regular classrooms was still prevalent.

Finding # III B.11

States frequently failed to ensure compliance with the same requirement for years and for several rounds of monitoring.

Looking at the three most recent monitoring reports (ranging from 1983–1998) for each of six states, they came into compliance as a group with only 18 of 66 noncompliant requirements (27%) identified in the first and/or second of the three monitoring reports. For 48 (73%) of the 66 noncompliant requirements found, either noncompliance was found again or no compliance finding was reported at all in the third monitoring report.

Of the 18 requirements with which states came into compliance, 10 (56%) had to do with the state's own administrative functioning (five—review and approval of LEA applications; three—complaint management; one–hearing decisions within time lines; and one—effectiveness of the monitoring system at identifying noncompliance).

Recommendation # III B.11

OSEP should strengthen compliance monitoring and enforcement by recognizing states that are performing well, offering ongoing technical assistance to states to correct noncompliance, and applying consequences consistently when improvement objectives are not met.

Finding # III B.12

The federal IDEA enforcement process has not provided clear and certain consequences for failures to correct noncompliance that would motivate the states toward compliance.

SEAs cannot be motivated to garner the will and the resources to come into compliance when the record shows that sanctions rarely occur.

Recommendation # III B.12A

The Department of Education's approach to remedying state noncompliance should link noncompliance findings with (1) measurable improvement objectives to be met within a defined time frame, and (2) a range of specific enforcement sanctions that will be incurred for failures to meet each of the improvement objectives within the specified time frames.

Recommendation # III B.12B

The Department of Education, the Department of Justice, and the Department of the Interior, with input from students with disabilities, their parents, and other stakeholders, should develop a broad range of sanctions linked to the failure to correct noncompliance within the time frames agreed upon in the corrective action plans.

A wider range of options is needed to allow more flexibility and consistency in the enforcement of IDEA. These options should clearly articulate the sanctions available with examples of circumstances in which each would appropriately be applied.

The following section briefly discusses the monitoring process as it relates to the issues of under-served populations.

7. OSEP Initiatives to Address Marginalization Issues

OSEP had taken several initiatives over the past decade to address noncompliance areas that particularly affect youth with disabilities who, because they are members of minority communities, living in state institutions, or served by state programs, have often been marginalized. In response to consumer complaints and research about the unavailability of services for eligible youth with disabilities in adult and juvenile correctional facilities, OSEP had collected data from SEAs to determine the extent to which states were exercising their general supervisory responsibility for ensuring the provision of special education and related services. When appropriate, OSEP also had conducted on-site visits to correctional facilities as part of its monitoring reviews.[211] OSEP reported compliance improvements in this area, although no data were provided to assess the extent of improvement.

OSEP has also conducted monitoring reviews of the Bureau of Indian Affairs (BIA), where BIA functions as the SEA for schools located on Native American reservations, and has worked with BIA staff in providing training to OSEP monitoring staff regarding American Indian culture. During the most recent (1998–99) monitoring review of the BIA, OSEP visited reservations and interviewed parents and advocates in Arizona, South Dakota, North Dakota, Utah, and New Mexico. OSEP has worked closely with groups appointed by BIA as part of the monitoring review process, including the newly created special advisory board.[212]

The Office for Civil Rights (OCR) has also worked in collaboration with OSEP and independently to address inappropriate placement of minority students. Since 1994, OCR has identified this issue as a high priority item in DoED's enforcement program. From October 1993 through July 1999, OCR has addressed 413 cases involving inappropriate placements of minority students in special education,[213] including 162 complaint investigations and 251 compliance reviews, some of which were statewide or citywide.[214] OCR had undertaken these cases based on its own concerns about possible noncompliance and believed significant resolutions have been achieved, "which provided for positive change for hundreds of thousands of students."[215]

Resolutions cited as examples included a strategy developed jointly with OSEP and the Mississippi Department of Education to address inappropriate placement of minority students and a Memorandum of Understanding (MOU) entered into by OCR and the Board of Education of the City of New York and co-signed by OSEP to address inappropriate referrals and placement of minority students in special education. OCR was monitoring these agreements, and evaluating how successfully the various measures had been implemented so as to increase the effectiveness of its enforcement efforts.[216] No data demonstrating improved compliance based on measurable indicators were provided for either of these states and may not yet have been available.

8. Perspectives on the Impact of Federal Compliance Monitoring

As part of our research, individuals who had been involved directly and indirectly with federal compliance monitoring at the state and local level were consulted. This section presents views on federal compliance monitoring from two different organizational vantage points.

a. The Consortium of Citizens with Disabilities

The Consortium of Citizens with Disabilities (CCD) is a coalition made up of more than a hundred national consumer, advocacy, provider, and professional organizations working in Washington, DC, on behalf of people with disabilities. For this study, NCD met with members of the Civil Rights Task Force to gain their perspectives on monitoring and enforcement of IDEA. They made several key points:

- While the federal role is critical, it is only *part* of the enforcement scheme.
- Parents have been and still are the main enforcement vehicle for IDEA; they carry too much of the burden.
- Protection and advocacy systems across the country and private litigation are crucial aspects of the overall enforcement scheme of the law.
- Monitoring reports have been useful, for the most part; however, all states still fail to ensure compliance with the law after more than 20 years of monitoring and enforcement.

- With the enactment of IDEA '97, the need for outreach training and technical assistance surpassed the considerable resources OSEP dedicated to meeting it.

- OSEP should use the clarified enforcement authorities (partial withholding of funds and referral to the Department of Justice) in IDEA '97.

b. The National Association of State Directors of Special Education

The National Association of State Directors of Special Education (NASDSE) is made up of those individuals responsible for ensuring compliance with IDEA in their states. NASDSE generally believes that compliance monitoring has absorbed considerable resources while producing limited results. They noted,

> "Legal compliance has absorbed the resources and time of professionals, hampering substantive efforts to improve programs. Compliance monitoring systems address little more than minimal process requirements and have had limited impact on educational quality. The need for transition from a system that focuses on the process of educating students to one that focuses on performance and results has been clearly recognized."[217]

NASDSE asserts that compliance monitoring "has usurped the entire function of accountability, thereby becoming a tyrant."[218] In an interview for this study, Martha Fields, Executive Director of NASDSE, noted that the tremendous amount of resources that have gone into monitoring has produced little. She noted that monitoring can only do so much and that, in her view, it had been maximized as a strategy for improvement. She held that monitoring represents the "IRS approach" and it runs counter to reform and improvement. Monitoring and the issuance of the reports, she suggested, would be more useful if they were done in the context of everything else that is going on in the state and if they were considered in relation to other matters/developments in the state, such as education reform. The categories of monitoring problems over the years have been consistent, she noted; however, the degree of the problems has lessened. She cited LRE as an example.

States know that federal monitoring is not going away, according to Fields. However, the states would like to see it approached differently. Fields noted that states found the implementation visits recently conducted by OSEP, intended to provide states with information about the 1997 IDEA amendments, to be beneficial. She also noted that states felt that they were working in partnership with OSEP to correct problems.

NASDSE would like to see the monitoring process driven by data. For example, the new law includes numerous new data collection requirements. If states look carefully at their data on achievement, dropout rates, and graduation rates and monitor those data over time, they will be in a strong position to identify problems and make changes. They could set realistic benchmarks and monitor their progress toward them. Some states, such as New York, are moving in that direction, according to Fields. It is important to be vigilant about the results—graduation rates, participation in post-secondary education rates, and employment rates—that are produced for students with disabilities, she says. There is some research to indicate that certain inputs make a difference in the kind of results achieved. For example, the better the teacher is trained, the better the results for the student. We need to be thinking about these inputs while keeping the spotlight on results, she noted.

Fields held that OSEP needs an enforcement philosophy and a strategy. Data would help to provide accountability for monitoring and enforcement. Federal enforcement of IDEA should involve withholding of funds, but it must be tied to a specific deficiency. For example, a certain percentage of funds could be withheld that was comparable to the nature of the infraction, but the nature of the infraction must be well documented.[219]

c. Findings and Recommendations

The findings and recommendations below capture themes from the dialogues described in this section.

Finding # III B.13

Some state compliance monitoring systems are inadequate because of a lack of staff, of resources, and of a systematic, coordinated approach statewide.

Recommendation # III B.13

OSEP should increase its monitoring of state monitoring systems, offer targeted technical assistance to correct deficiencies, and enforce when the state fails to take corrective action.

Finding # III B.14

Compliance monitoring at both the state and federal levels is not sufficiently data-driven, objective, or consistent, relying too little on agreed upon indicators and measures of performance.

Recommendation # III B.14

The Department of Education should maintain a priority on working with the states to improve accountability for implementing IDEA through effective data collection and analysis.

OSEP should continue working with states to improve their compliance monitoring and enforcement capabilities through data collection related to key performance indicators and regular, thorough, and ongoing analysis of the data. Without these activities, the extent and nature of reported compliance problems cannot adequately be understood or corrected. Among the reported problems that require continuous monitoring are the provision of FAPE and related educational services to eligible youth with disabilities in state and local detention and correctional systems as well as disproportionate representation of minority students with disabilities in separate educational settings and in the state child welfare and juvenile justice systems.

The following section examines the complaint handling mechanisms associated with IDEA.

C. Oversight: Complaint Handling

As noted earlier in this report, there is no federal complaint mechanism for IDEA analogous to that for other civil rights laws. Other civil rights laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, are primarily enforced by complaint investigations. The complaint mechanisms for these other civil rights laws require the individual who believes he or she has experienced discrimination to file a complaint with the federal agency that is responsible for enforcing the law; e.g., with the Equal Employment Opportunity Commission if it is a potential violation of the employment provisions (Title I) of the ADA. The designated enforcement agency processes the complaint and assists the complainant in resolving it.

The complaint mechanism for IDEA rests at the state level. Every state is required to have a mechanism for parents to file complaints and a process for resolving them. The Department of Education, however, does receive complaints from parents, herein called general complaints, which it refers back to the states. Prior to 1999, the Secretarial Review process enabled a parent to appeal to the Secretary after exhausting the state complaint process. However, based on the recommendations of an Inspector General's report (discussed below in subsection 2), the Secretarial Review process was eliminated in the new regulation.

In addition to these two federal complaint processes, the OCR in the Department of Education receives and processes education complaints under Section 504 and under Title II of ADA. These OCR complaints appear to also address IDEA issues. These three complaint processes are considered in this section of the report.

1. General Complaints About IDEA Received by OSEP

Until 1999, complaints received by the Office of Special Education were considered in two categories: general complaints and Secretarial Review complaints. The general complaints came from someone in a state, most frequently a parent. Because IDEA did not provide a complaint process at the federal level, OSEP referred these complaints back to the states for processing and notified the complainant. OSEP also may have contacted the complainant to explain the options available to him or her, if it was clear that the complainant did not understand requirements of the law. Copies of the complaints were provided to the leaders of the monitoring teams for the state involved.[220]

During 1995, OSEP received 288 general complaints; during 1996, 348 such complaints; and during 1997, 377 such complaints.[221] California was the subject of the most complaints of any state or territory for a year: 58 complaints in 1997. Some states had no complaints filed about them.

For this study, a sample of data about the complaints was requested, in order to analyze the issues they raised. OSEP provided data on complaints from California, Illinois, New York, and Texas. Unfortunately, the coding system for the complaints did not allow for issue analysis. Complaints were coded with general terms such as "child complaint" and "special education compliance complaint." It appeared that any issue analysis would require reading each complaint, which was beyond the scope of this study. The 24 New York complaints for 1996 were examined to determine the total processing time. Of the 24, six took one month or less to close; 10 took one to five months; three took five to six months; and five did not include enough information to determine the time line. Considering that OSEP's procedure was to refer the complaint back to the state for processing, it was noteworthy that more than half of the complaints took over a month for such referral.

2. Secretarial Review of IDEA Complaints

In March 1999, the Department of Education issued final IDEA '97 regulations eliminating the Secretarial Review process. This elimination was recommended by an Inspector General's report described below. Up until March 1999, the following process was used for Secretarial Review of IDEA complaints: (1) Individuals who were dissatisfied with a state's final decision in regard to a state complaint could complain to the federal Department of Education. These complaints were referred to as "Secretarial Review." (2) To initiate a Secretarial Review request, a complainant had to send OSEP a copy of the SEA's final decision on the complaint; a copy of the complaint filed with the SEA that resulted in the final decision; and a letter outlining the specific aspect of the decision that the requester challenged, the basis for the challenge, and the relief sought. (3) OSEP and OGC work collaboratively to determine whether to grant the review, remand the request back to the state, or deny the review.

In 1995, OSEP received 70 requests for Secretarial Review; in 1996, they received 103 requests; and in 1997, 51 requests. In August 1997, the Inspector General of the U.S. Department of Education issued an audit report titled "Secretarial Review Process In Need of Change."[222] The report concluded that the Secretarial Review process should be eliminated for the following reasons. First, few complaints addressed systemic issues. During the period of March 17, 1995, to February 11, 1997, only two of 15 complaints "granted" Secretarial Review requests addressed systemic issues. Most were individual complaints seeking individual remedies, and the Inspector General felt that DoED's energies are better spent on systemic compliance, in activities such as monitoring.

Second, the process was seen as providing minimal benefits to the complainants. DoED granted Secretarial Review to a small percentage of requests. In a period of almost two years, determinations providing remedies to the complainants occurred in only 12 cases. In five of the 12 cases, the child with a disability did not actually receive any benefit because she or he was no longer enrolled in the school that was the subject of the complaint.

Third, requests for Secretarial Reviews were not processed in a timely fashion, according to the report. It routinely took DoED over a year to process a request. Of the nine "granted" requests in 1995, the letter of determination was issued in less than one year in only two cases.

Finally, DoED was seen as being in a weak position to decide cases and to decide them in a timely fashion. Because DoED was totally dependent upon the clarity and accuracy of written information provided by the participants, officials had to make numerous inquiries of participants. When participants did not agree on the events, DoED usually denied the request.

Although a data sample from Secretarial Review requests was sought in order to analyze the issues raised, not enough detail was retained in the record-keeping system to draw any conclusions about the issues.

The Inspector General's audit, however, which examined the Secretarial Review from a process perspective, offered the following recommendations: (1) OSERS should work with state education officials, advocacy groups, and others to identify best practices from the state complaint process and develop guidelines to assist states in improving state complaint processes. Performance measures should be developed to evaluate the effectiveness of the state complaint processes. (2) OSEP's monitoring process should be enhanced with a particular emphasis on state complaint processes. (3) Over time, OSEP should evaluate the effectiveness of the reforms states have instituted for their complaint processes, identify states with poor complaint processes, and ensure corrective action. (4) OSERS should take steps to eliminate the Secretarial Review process.

In the proposed regulations issued on October 22, 1997, OSERS eliminated the provision that establishes the Secretarial Review process.[223] In the discussion prior to the regulations, OSERS cited the Inspector General's recommendation and notes that the removal of the Secretarial Review provision "will allow the Department to spend more of its time and attention on evaluating states' systems for ensuring compliance with program requirements, which will have benefit for all parties interested in special education."[224] OSEP reports that at the present time, they still lack the necessary resources to conduct such evaluations.[225]

The final IDEA regulations, issued March 12, 1999, delete the provision for Secretarial Review. DoED notes that it implements the Inspector General's recommendations in the new regulations by adding provisions that address state complaint procedures.[226] Those provisions include a requirement that states notify parents of the state complaint system and how to use it as a part of the procedural safeguards notice.[227] In responding to the recommendations of the Inspector General's report, advocacy groups raised a concern that the elimination of the Secretarial Review process would leave parents of disabled children no options to appeal final

SEA decisions other than the costly due process system or the courts. They recommended that the Secretarial Review process not be eliminated until another system was in its place. They cited the poor condition of many state complaint processes as a major concern. The loss of a federal appeals process to the state complaint process was problematic for them.[228]

3. Section 504/ADA Complaints Received by OCR/DoED

While the Department of Education Office for Civil Rights has no direct responsibility for monitoring IDEA or investigating IDEA complaints, it does have responsibility for enforcing Section 504 and Title II of ADA as they relate to education. OCR appears to be receiving a large number of complaints that may also be complaints under IDEA, and processing a significant number of complaints alleging multiple violations, sometimes under more than one law. OCR must respond to any allegations addressing Section 504 or ADA provisions, while allegations alleging violations under IDEA are forwarded to OSEP, which in turn sends them back to the states for processing. If a complaint contains an allegation under IDEA and either an ADA or Section 504 allegation, OCR's resolution probably will address the IDEA allegation. From the data provided by OCR, it could not be determined how many of the complaints contained IDEA allegations or how these were handled.

From early 1993 through May 4, 1998, OCR received 5,684 complaints under 504 or ADA, or both, in which the respondent was a primary or secondary school and which could also have been complaints under IDEA. Appendix I provides three tables addressing the number of IDEA-relevant complaints received during this period and discusses in detail the issues raised by these complaints, the types of disabilities experienced by those making the complaints, and the general resolution of the complaints. The 5,684 complaints against elementary and secondary schools represented 72.3 percent of all the individual complaints OCR received under ADA Title II.

These complaints cited issues that may have been IDEA issues. The vagueness of the complaint categories made it impossible to determine definitively how many complaints actually contained allegations of violations under IDEA. For example, almost 42 percent of the issues were related to "admission to education program." Some of these complaints could have been related to IDEA students not being admitted to the program they believed most appropriate for them. Almost 20 percent of the complaints were classified as "program service." These could have been situations where students with disabilities who were served under IDEA were not receiving the services they need. Twenty-two percent of the complaints were classified as "student/beneficiary treatments." Some complaints under this category may have related to IDEA students not receiving needed services.

The largest disability category among the 5,684 complaints was learning disability, at almost 19 percent. This is also the largest disability category of students served under IDEA. Children with hearing problems, mental illness, mental retardation, orthopedic impairments, attention deficit disorder, and speech impairments are all complainants under ADA/504. Children with these disabilities are also served under IDEA.

Historically, many have believed that Title II ADA/504 K–12 education-related complaints primarily address physical access to public and private schools; for example, ensuring that schools have ramps so people using wheelchairs can use them to enter the school. These data indicated that almost half of those filing Title II ADA/504 K-12 education-related complaints had cognitive or mental impairments, including learning disabilities, mental illness, mental retardation, attention deficit disorder, and attention deficit and hyperactivity disorder.

It is also interesting to note that complaints from students of higher education age appear to be a relatively small proportion of complaints that the OCR in the Department of Education receives. They could account for no more than 27 percent of the total, because about 73 percent are related to elementary and secondary schools.

4. Findings and Recommendations

Finding # III C.1

There is no federal complaint process for IDEA to complement and expand the scope of complaint-handling systems at the state level.

There is a need for a federal complaint handling system to provide students with disabilities and their parents a vehicle for filing and resolving complaints alleging widespread or systemic violations occurring at the SEA or LEA levels. Because state complaint handling systems are largely geared to addressing individual complaints, such a federal process would help to close an existing gap in the enforcement infrastructure.

Recommendation # III C.1A

Whenever Congress and the President approve an increase in the funding to be distributed to local schools under Part B of IDEA, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total increase in Part B funding to build the Department of Education's and Department of Justice's enforcement infrastructure to help drive improvements in state compliance and better results for children. Priorities for use of these funds should include a federal process for handling specific categories of IDEA complaints and the expansion of technical assistance for improving state complaint handling, monitoring, and enforcement systems.

Recommendation # III C.1B

Congress should amend IDEA to create a complaint handling process at the federal level to address systemic violations occurring in SEAs or LEAs.

Congress should designate the Department of Justice to administer the process and allocate adequate funding to enable that Department to take on this new role. This new federal complaint process should be designed to complement, not supplant, state-level complaint-handling and due process procedures. The federal process should be simple to use and easy to understand by parents and students. The Department of Justice should develop and disseminate explicit criteria for the types of complaints alleging systemic violations it will prioritize given its limited resources.

Finding # III C.2

Information about IDEA complaints filed with state complaint systems is often limited.

The only complaint process for IDEA is at the state level. Information and analyses about the nature and outcome of state complaints are not readily available to complainants or other stakeholders at the state level and are not nationally compiled on a state-by-state basis.

Recommendation # III C.2

The Secretary of Education should require states to submit annually a summary analysis of all state complaints alleging violations of IDEA, including a listing of complaints received by category and by LEA, with a brief description of the allegations, opening and closing dates, and type of resolution.

Under IDEA, the Secretary of Education may require the states to submit any data deemed necessary to administer the law.[229] These analyses should inform OSEP's monitoring, compliance and enforcement activities, as well as OSEP's technical assistance efforts and those of its technical assistance grantees. This information should be shared with OCR and the Department of Justice. It should be widely disseminated to stakeholders in the state.

Finding # III C.3

State complaint systems under IDEA need improvement.

According to the Inspector General's report, state complaint systems should be improved and more intensely monitored by OSEP. While the IDEA '97 regulations intended to improve state complaint systems, OSEP has lacked the necessary resources to conduct such evaluations.

Recommendation # III C.3

OSERS should work intensively with states to improve state complaint systems.

OSERS should identify model practices in states and proactively provide technical assistance for improvement of systems in states to include development of a statewide mechanism for tracking all complaints and capturing basic information about each complaint such as nature of complaint, time line for resolution, outcome, and satisfaction of complainant with outcome. OSEP should monitor the adequacy of state complaint systems to produce accurate accounting of all complaints filed and data sufficient to analyze the effectiveness of complaint handling throughout the state.

The next section examines the range of enforcement actions available under IDEA and their application.

D. Enforcement

1. Restrictions on Grant Awards: High-Risk Status with Special Conditions and Compliance Agreements

In situations where states have demonstrated persistent failure to ensure compliance with IDEA, DoED may award their funds under "high-risk status with special conditions,"[230] or in accordance with compliance agreements.[231] "High-risk status with special conditions" is used when OSEP has determined that compliance can be achieved within a relatively short period of time. Compliance agreements are used when OSEP has determined that it is likely to take a relatively long period of time for the state or entity to come into compliance.[232] According to DoED, as Table 21 below notes, one or both actions have been taken with five states/entities in relation to IDEA Part B: Puerto Rico, California, Virgin Islands, Pennsylvania, and the District of Columbia.[233] After the major research for this report was completed, DoED awarded funds in 1999 to New Jersey and again to Pennsylvania under special conditions. Funds have not yet been awarded to the Virgin Islands, and a compliance agreement has not yet been signed.[234]

Table 21: High-Risk Grantees/Special Conditions/Compliance Agreements for Part B State Grant IDEA Awards Determined by OSEP[235]

Puerto Rico	Compliance Agreement under Part B for FY '93–'96; Special Conditions under Part B for FY '96-FY '98 for lack of compliance in evaluation, re-evaluation, and related services.

California	Special Conditions in FY '97 and FY '98 regarding services to students in adult correctional facilities.
Virgin Islands	Special Conditions on Part B beginning in FY '98 for related services, personnel, re-evaluations, least restrictive environment, transition statements in IEPs, length of school day; Compliance Agreement negotiated and planned to become effective in late 1999 or in 2000.
Pennsylvania	Special Conditions on Part B award for FY '98 and FY '99 for failure to take enforcement steps against LEAs that are out of compliance.
District of Columbia	Compliance Agreement under Part B for FY '97, FY '98 and FY '99 for lack of compliance in related services, timely evaluations and re-evaluations, and hearing time lines.
New Jersey	Special Conditions for FY '99 for continuing lack of compliance in some areas under Part B; terms of special conditions incorporate New Jersey's own corrective action plan.

In a 1991 monitoring report, OSEP found that Puerto Rico failed to ensure compliance with IDEA in a number of significant ways. There were lengthy, widespread delays in initial evaluations, re-evaluations, and the provision of needed related services. Given the magnitude of these delays and the fundamental infrastructure and legislative changes that would be needed to correct them, it was determined that the Puerto Rico Department of Education (PRDE) would need more than a year to complete correction. Following a public hearing, OSEP and the PRDE entered into a compliance agreement that set forth specific requirements for incremental correction and reporting. During the three-year term of the agreement, PRDE corrected the delays in initial evaluations and many re-evaluations and made substantial progress in correcting the delays in related services. In 1996, the compliance agreement was concluded; however, full compliance with re-evaluation requirements and related services was still lacking. At that point OSEP designated Puerto Rico as a high-risk grantee and special conditions were applied to the Part B grant until the corrections were completed. The special conditions involved implementing the corrective action plan, collection of data, and regular reporting on progress to OSEP. In the spring of 1998, OSEP determined that PRDE was no longer a high-risk grantee. It is interesting to note that from 1993–1996, during the period that PRDE was under a compliance agreement, they also had a fully approved state plan (see Table 2 and Part IV above).

The 1993 monitoring report found that the Virgin Islands Department of Education (VIDE) had failed to provide (1) needed related services set forth on IEPs, (2) personnel in needed service areas, and (3) timely triennial re-evaluations. In the 1998 monitoring report, OSEP found that VIDE had not corrected these areas of noncompliance. In addition, OSEP held that VIDE had not ensured that (1) students with disabilities were served in the least restrictive environment, (2) that the IEPs for students 16 years of age or older included transition services, and (3) that students with disabilities were meeting SEA standards regarding length of school day. In addition, OCR determined that VIDE is not in full compliance with Section 504 of the Rehabilitation Act or Title II of ADA in relation to a free appropriate public education and accessibility of public education programs and buildings. The FY '98 award designated VIDE a high-risk grantee with special conditions and included the steps that VIDE was required to take to ensure that it fully complies with Part B. Monthly reports detailing progress are required and grants are made on a quarterly installment basis provided VIDE has complied substantially with the relevant conditions.[236] OSEP is currently developing a compliance agreement with the Virgin Islands.

In a 1998 follow-up monitoring visit to Pennsylvania, OSEP found that the Pennsylvania Department of Education (PDE) had not taken enforcement action against a school district although the district had failed to make timely corrective action to address deficiencies identified by PDE and OSEP in previous monitoring reviews. OSEP imposed special conditions on Pennsylvania's FY '98 Part B grant because of this failure to exercise general supervision authority and utilize enforcement to secure compliance with IDEA. The special conditions require Pennsylvania to submit quarterly reports to OSEP to document (1) the steps PDE has taken to ensure that the identified LEA fully complies with Part B, including that PDE has taken enforcement actions against the LEA where the LEA has failed to complete corrective actions in a timely manner, and (2) the steps PDE has taken to ensure that corrective action is taken by other public agencies for which PDE identifies deficiencies in meeting Part B requirements, including appropriate enforcement actions against those agencies.[237]

The 1994 monitoring report found the District of Columbia Public Schools (DCPS) failed to ensure compliance in related services, least restrictive environment, evaluations, and due process time lines. A 1995 follow-up report determined that significant problems remained with regard to least restrictive environment, related services, and evaluations every three years. A compliance agreement was drawn up between OSEP and DCPS for three years so that DCPS could come into compliance with Part B requirements. The agreement includes a schedule for reducing the number of children with disabilities who have not received evaluations, re-evaluations, and related services to which they are entitled; reducing the number of hearing decisions that have not been issued within the 45-day time line; and reducing the number of decisions that have not been implemented. DCPS must follow certain data collection and reporting procedures. As of March 1999, DCPS has met few goals set out in the compliance agreement.[238] At the time research for this report was completed, DoED had not yet taken any stronger enforcement action against DCPS (e,g., withholding of federal funding or referral to the Department of Justice).

2. Withholding of Funds

If a state persists in noncompliance, DoED may exercise its authority to withhold funding from the state. When the Secretary determines that "there has been a failure by the state to comply substantially with any provision of this part [Part B]," the Secretary shall withhold further payments to the state.[239] IDEA '97 states that the Secretary shall not make a final determination of ineligibility until she or he provides a state with reasonable notice and an opportunity for a hearing. If the SEA is dissatisfied with the Secretary's final action after a proceeding, the agency may file for a review with the U.S. Court of Appeals for the circuit in which the state is located. A copy of the petition must be transmitted to the Secretary, who must file the record of the proceedings on which the actions were based. The Court may remand the case back to the Secretary for further evidence, and the Secretary may make new or modified findings of fact that may modify the previous action. The Court of Appeals has the authority to affirm the Secretary's action or to set it aside, in whole or in part. The Supreme Court may review the court's judgment.[240]

The 1997 IDEA amendments clarified the withholding of funds provision in the law. Prior to the amendments, the law indicated that the Secretary could "withhold any further payments" from noncompliant states. The amendments included language specifying that the Secretary could withhold funds "in whole or in part" from the state.[241] The law further clarified that the Secretary may determine that the withholding be limited to programs or projects or portions of those programs or projects affected by the failure. The Secretary may further determine that the SEA shall not make further payments to specific LEAs or state agencies affected by the failure. Payments to states may be withheld in whole or in part until the Secretary is satisfied that there is no longer any failure to comply with the provisions of Part B. No action has yet been taken utilizing this new withholding provision, nor has DoED provided any guidance or further articulation as to how partial withholding will be implemented.

To date, a determination of noncompliance resulting in a decision to withhold funding has occurred only once, with the state of Virginia. As a result of a complaint and follow-up correspondence with the state, OSEP became aware in 1993 that the Virginia Department of Education (VADOE) was not requiring LEAs to provide educational services to children with disabilities who had been suspended long-term or expelled from school. OSEP asked Virginia to revise its regulations related to the provision of services to students who were on long-term suspension or expulsion in order to receive funds for FY '94. Virginia refused to change its practice to correct the problem, and DoED proposed disapproval of the 1993–95 state plan and found VADOE ineligible for FY '94 funding. DoED offered VADOE an administrative hearing on the issue. VADOE, however, sought emergency relief in the Fourth Circuit, which in April 1994 ordered DoED to release FY '94 funding to VADOE and provide VADOE an administrative hearing before withholding future funds. The administrative hearing was conducted in October 1994, and in April 1995 the hearing officer found that IDEA requires the provision of a free appropriate public education to all children with disabilities, including those on long-term suspension or expulsion for behavior not related to their disabilities. That decision was upheld by the Secretary in July 1995 and affirmed by the Fourth Circuit in June 1996.

VADOE then sought a rehearing, and in February 1997, the Fourth Circuit reversed its prior position and held that IDEA, as then in effect, did not require the provision of educational services to children with disabilities who are suspended or expelled for behavior not related to their disabilities. The IDEA Amendments Act of 1997 addressed this issue by clarifying that the obligation to provide a free appropriate public education to all children with disabilities includes children with disabilities who have been suspended or expelled from school.[242]

3. Cease and Desist Order

Under the General Education Provisions Act, the Secretary may issue a complaint with a notice of hearing to a state describing the factual and legal basis for his or her belief that the state has failed to comply substantially with a requirement of the law.[243] The final agency action is a report and order of an Administrative Law Judge's (ALJ) requiring the state to cease and desist from the practice, policy, or procedure that resulted in the violation. DoED may enforce the final order by withholding any portion of the state's grant award or by certifying the facts to the Attorney General, who may bring an appropriate action for enforcement. The state may request judicial review of the final order by the appropriate U.S. Court of Appeals.[244]

The Department has never used this option to enforce IDEA.

4. Referral to the Department of Justice for Enforcement Action

The 1997 IDEA amendments clarified that the Department of Education could refer a state to the Department of Justice for enforcement action after determining that there has been a failure to substantially comply with any provision of IDEA, or "to comply with the terms of any agreement to achieve compliance with [IDEA] within the time line specified in the agreement." While some believe the Department of Education has always had this authority, it was explicitly included in IDEA for the first time in 1997. The regulations for IDEA '97 do not, however, provide criteria for determining when such a referral would be made. The Department of Education has never referred a state or entity to the Department of Justice for enforcement action due to noncompliance with IDEA.

5. The Politics of Enforcement

In at least two instances when the Department of Education took enforcement actions against states, it was met with political resistance (see letters in Appendix D). In the case of Virginia, when DoED withheld funds because the state failed to ensure compliance with IDEA, the Secretary received multiple letters from members of the Virginia Congressional delegation as well as a plea from the governor of Virginia to release the funds. In his letter, Governor Allen noted, "The President has expressed a desire to relieve the states of unnecessary and excessive federal mandates. We are heartened by that timely expression and look forward to your beneficial intervention in this matter."[245] A letter from the Virginia Congressional delegation noted, "Clearly, it is unfair to hold all children with special education needs in the Commonwealth hostage to a disagreement over policy interpretation."[246] Secretary Riley persisted with the enforcement actions and did not retreat.

When the Department of Education placed Pennsylvania on "high-risk" status, Secretary Riley received a letter from four members of the Pennsylvania Congressional delegation questioning his decision (see Appendix D). The September 2, 1998, letter, from Rep. Goodling, Rep. Gekas, Sen. Specter, and Sen. Santorum, notes that the members are "deeply concerned" over DoED's decision to impose sanctions on Pennsylvania. They state that it appears that DoED is moving toward threatening to deny the more than $139 million the state receives under Part B of IDEA. The members urge DoED to pursue "a more constructive approach to ensuring compliance with . . . IDEA." The letter goes on to question DoED's insistence that the Pennsylvania Department of Education deny funding to the Harrisburg School District. Such an action would only hurt children, they note. (DoED did not rescind its designation of Pennsylvania as a "high-risk" state with sanctions). Despite the fact that Secretary Riley did not retreat, such responses from politicians may have a chilling effect on future enforcement efforts. In addition, they may at least partially explain why so little enforcement has taken place in the past 25 years. That lack of effective implementation was so much at the heart of deliberations during the1997 IDEA reauthorization was ironic, given the resistance by members of Congress to the Virginia and Pennsylvania enforcement actions. Their public resistance indicated a lack of Congressional awareness about the pervasive and persistent noncompliance with IDEA across the country.

6. Findings and Recommendations

Finding # III D.1

The Department of Education has identified six enforcement actions it has taken against states for noncompliance with IDEA Part B, all within the past six years.

According to information provided by the Department of Education, only six enforcement actions have been taken under IDEA Part B since its enactment. Five of these enforcement actions were related to attaching special conditions to the grant award or developing compliance agreements. The other was an attempt to withhold funds from a state, which was overruled by the court. All have occurred since 1993.

Recommendation # III D.1

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop objective criteria for utilizing compliance agreements and special conditions as enforcement actions.

These criteria should be based on certain outcomes of the monitoring process. For example, if a state fails to ensure compliance with a particular requirement for a certain period of time, after the provision of technical assistance and an opportunity for correction, it would immediately be required to develop a compliance plan. If such a plan were not fully implemented by a certain date, a greater sanction would be prescribed. (See discussion under Part VII about new approaches to monitoring in state systems.)

Finding # III D.2

The Department of Education has withheld federal funds from a state because of noncompliance with Part B of IDEA only once in the past 25 years.

In 1994, DoED briefly withheld funds from the Commonwealth of Virginia due to a state policy that denied any services to special education students who were suspended or expelled from school. Although DoED lost its case against Virginia, IDEA was subsequently amended to clarify that the Virginia policy was illegal. The 1997 amendments to IDEA also explicitly gave DoED the authority to withhold a partial amounts of funds.

Recommendation # III D.2

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop a broad range of options for withholding partial funds from noncompliant states and the criteria (triggers) for when they will be used.

Consideration for how partial withholding of funds could be utilized might include the notion of withholding state administrative funds for a state that fails to ensure compliance with state monitoring requirements and utilizing those funds to hire an independent entity to conduct state monitoring. Again, withholding of funds should never be a surprise to anyone. Rather, it should be the predictable result of certain behavior.

Finding # III D.3

Political resistance to IDEA enforcement from Congressional delegations and state administrations of the noncompliant state may have a chilling effect on enforcement.

DoED enforcement actions in Pennsylvania and Virginia resulted in letters from members of Congress and the Governor of Virginia requesting that the Secretary rescind the actions. The Secretary did not rescind either action. In some instances, the members who wrote questioning and protesting the DoED's actions had key roles in overseeing DoED's funding or programs, particularly with respect to IDEA. Such political resistance may cause DoED to be hesitant in pursuing enforcement, which would impact future enforcement efforts.

Recommendation # III D.3A

The Department of Education should take the lead in educating both the Congress and state legislators about the failure of states to ensure compliance with IDEA and how this affects children with disabilities and their families.

The Department of Education should exercise its leadership as enforcer of IDEA to educate federal, state, and local legislators about the extent to which the law has not been fully implemented and the toll on children with disabilities, their families, and their communities. Specifically, DoED should brief the members of each state delegation before its planned monitoring visits to discuss the technical assistance resources available to states in correcting compliance problems, enforcement options, and the long-term consequences of persistent noncompliance for children with disabilities. The Department should urge legislators to take responsibility for helping their states achieve compliance.

The Department of Education should also be proactive in implementing a well-timed and coordinated communication strategy for each planned enforcement action it takes and in fostering dialogue about the issues. The strategy should include media outreach and briefings targeted to stakeholders and other interested parties, including federal, state, and local officials, parent groups, and others.

Recommendation # III D.3B

The Department of Education should post any letters it receives from members of Congress questioning enforcement actions related to IDEA on the DoED web site and distribute them to Parent Training and Information centers, Protection and Advocacy systems, and other legal advocacy organizations.

Such inquiries by members of Congress provide opportunities for parents and their advocates to educate Congress about IDEA noncompliance in their state and the toll it takes on their constituents.

Finding # III D.4A

The Department of Education has not yet provided policy guidance regarding criteria for referral to the Department of Justice, authorized by the 1997 amendments to IDEA.

While new regulations provide some information on the process of referral to the Department of Justice, they do not clarify the criteria for making such a referral.

Finding # III D.4B

The Department of Education has never referred a state to the Department of Justice for substantial noncompliance with IDEA.

Authority for the Department of Education to make such referrals was made explicit in the 1997 IDEA Reauthorization.

Recommendation # III D.4

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop objective measures for determining "substantial noncompliance," the point at which a state will be referred to the Department of Justice for legal action.

Part IV presents findings from the Department of Education's Annual Reports to Congress between 1978 and 1998 and analyzes these findings for a historical view of the implementation IDEA.

IV. The National Compliance Picture Over Time: Analysis of Annual Reports to Congress 1978–1998

A. Introduction

Since the enactment of the Education for All Handicapped Children Act, the Department of Education (DoED) has been required to present to Congress an annual report "describing the progress being made in implementing the Act."[247] The Annual Reports are of critical importance, as they are the primary vehicles for communication between the Department of Education and not only Congress, but the public at large. They also provide a unique historical view of the implementation of the law.

B. Methodology

This analysis took a longitudinal view of the Annual Reports in an effort to trace the progress made in implementing the Individuals with Disabilities Education Act (IDEA) over a twenty-year period. The Annual Reports included statistics on the number of children in various disability categories who receive services, as well as descriptions of new services being developed and numbers of personnel devoted to special education. Monitoring the performance and implementation of the law at the state level is crucial to "our nation's progress in providing a free and appropriate public education [FAPE]"[248] for all children with disabilities. Such monitoring should reveal deficiencies, violations of the law, trends in these areas across states and over time, corrections that have taken place, and progress toward compliance. Thus, this section of the analysis focuses on those portions of the Annual Reports devoted to the monitoring function of the Department of Education between 1978 and 1998.

C. Procedural Focus

Annual Report sections centered on OSEP monitoring were primarily procedural rather than substantive, making it difficult to draw any longitudinal conclusions about progress in implementing FAPE. For example, the 1990 report states that "OSEP uses a program review process to determine if SEAs are carrying out their responsibilities" and then explains that "those program review procedures are described in this section."[249]

D. Definition of Monitoring

The identification of the discussion of monitoring in each Annual Report was hampered by the lack of a standard reporting structure and a changeable definition of the monitoring function. At times, monitoring broadly included review of states' annual plans, yearly program compliance review, processing of individual complaints, and technical assistance to the states.[250] At other times, monitoring was defined as a narrow aspect of DoED's or the Office of Special Education Programs' (OSEP's) administrative role in overseeing IDEA.[251] For example, in 1983 such overall administration encompassed complaint management, technical assistance, discretionary contract/grant program operation, and policy review.[252]

Later, monitoring was treated as a subset of federal review of state activities.[253] For example, in 1986 the Report stated that "the program review process has two parts... review of plans submitted by states. . . and monitoring to assure adherence to state plans."[254] When viewed as part of a general review of the states, monitoring was often treated as secondary to review of "annual" state plans that were submitted to DoED by each state every three years for funding approval. Monitoring activities were often named "compliance review," as distinguished from "plan review."

In the 1990s, references in the Annual Reports to monitoring were sometimes explicit and sometimes imbedded in descriptions of the overall federal review process. The 1990 report acknowledged the difficulty in pinning down the monitoring function, as "the federal program review activities . . . are closely related to other OSEP activities. . . as part of a comprehensive system of overall assistance to the states."[255]

This section of the analysis uses the term "monitoring" to apply to the federal assessment of the states' compliance with the provisions of IDEA, including an assessment of the SEAs' activities to ensure the compliance in their respective states of all the public agencies responsible for providing educational services for children with disabilities in accordance with Part B requirements.

E. Procedural Changes

When the Department of Education reported on its monitoring activities, a large portion of the discussion was devoted to the procedural aspects of monitoring rather than results or findings. Further, procedures for monitoring were modified frequently (as exemplified by this year's retooling of the process, discussed elsewhere). These modifications not only required explanation within each of the Annual Reports, but also hampered efforts to compare results of the monitoring process from year to year.

In 1979 and 1980, it was not surprising that DoED focused on the development of procedures. During these years, the Bureau (as OSEP was then named) established a system of regular visits to half of the states each year, consisting of a five-day stay by four or more staff members and including visits to local programs, state programs, and state agencies, as well as interviews with state and local officials, program administrators, parents, teachers, and an advisors' panel.[256] In 1980, the Bureau reiterated that it "attempts" regular one-week visits to half of the states each year, using the same basic procedure as described for 1979. That year, an extra emphasis was placed on technical assistance to SEAs during these visits.[257]

The 1980 Annual Report also provided an example of the Reports' somewhat cursory description of results of monitoring, as compared to the detailed descriptions of procedural matters. In 1980, the substantive analyses of the outcome of earlier visits were as follows: states "performed well" in development of Annual Program Plans, reporting, and administration of funds;. IEPs were in place but not in compliance; LRE policies at the state level were good, although individual schools were "having difficulty" implementing them;[258] complaints, while monitored by the Bureau, were handled at the level of the state departments of education. The Annual Report states that 320 complaints were processed between October 1978 and July 1979, and that most complaints were about appropriate placement of children, but results of the processed complaints are not mentioned.[259] The substantive discussion of findings by the Bureau appeared to concentrate on procedural matters, such as successful design of rules, fund administration, and timely processing of complaints. This characteristic was repeated in most

Reports in the past 20 years, as in the Eighth Annual Report, which gave "a detailed description of SEP's revised comprehensive compliance review system."[260]

The emphasis on procedure increased as DoED refined its monitoring procedures to involve less scrutiny of outcomes. In 1981, DoED stated that "the Office will redirect its monitoring procedures . . . to focus on assuring that states are effectively monitoring local education agencies." DoED appeared to have increased its reliance on information provided directly by states themselves.[261] The following year, DoED explained, "OSEP's role has necessarily changed. In fact, federal efforts since the enactment of P.L. 94-142 have periodically been modified to provide the states with increasing flexibility to implement the law in a manner consistent with local precedents and resources."[262] The Report continued, "It should be noted that the current regulations were never expected to survive indefinitely without change."[263] Understandably, procedures underwent annual alterations in the early stages of the implementation of IDEA; since then, such changes have continued. The 1985 Report stated that "internal SEP concerns supplemented by questions from . . . Congress resulted in an intensive analysis of monitoring procedures that may lead to certain revisions in the process."[264] The following year, OSEP began a staggered state plan schedule, as permitted by the Education Department General Administrative Regulations (EDGAR) to "allow for better coordination between the state plan and monitoring procedures."[265] The 1990 substantive discussion of the effectiveness of IDEA changed little. Most of the comments were praiseworthy but vague and directed at successful structures, such as "types and numbers of personnel providing services," and "continuing growth in SEA [state education agency] capacity to assess and assure conformity with EHA-B [Education for All Handicapped Children Act] requirements."[266] Another procedural accomplishment highlighted that year was the elimination of a backlog of incomplete monitoring reports.[267] The 1990 Report also stated that "it is anticipated that the monitoring process will continue to evolve and undergo adjustments in response to changing management needs."[268] The 1997 Report stated that "over the past four years, OSEP has worked intensively to reorient and strengthen its monitoring system."[269]

F. Lack of Trend Analysis

The Annual Reports noted that corrective actions with deadlines were established by OSEP for noncompliant programs. Each state created and submitted a Corrective Action Plan (CAP), which was followed by a verification visit by OSEP for evidence of completion submitted by the state.[270] Successive Annual Reports did not give information about these verification visits or evidence from the states. In 1981, DoED began a policy of individualizing monitoring to "take into account the particular conditions and variations that exist among the states."[271] That policy hampered the ability to make progress comparisons between states. Because OSEP visited one half of the states in a given year, at most, no follow-up of individual state progress could be gleaned by comparing one year's Annual Report with the next. Because states were not individually named in summaries of compliance review findings, only OSEP had the information to trace such progress. While OSEP looked first at a state's Annual Program Plan, then monitored its compliance, and then watched for implementation of a Corrective Action Plan, it did not appear to link its findings from one stage to the next. In fact, one report noted, "this information cannot be used as a basis for conclusions regarding compliance," but "it will be used as a basis for discussing trends that may reflect problems in the implementation of federal requirements."[272] This discussion was not found.

The Eleventh Annual Report compiled data from 1985 to 1988 on noncompliance problems, noting particular trouble with SEA monitoring procedures, but the data were not examined longitudinally, and states were not individually identified. The 1990 report held that "by reviewing and assessing these data, OSEP may identify trends that raise concerns about the implementation of federal law,"[273] but went on to say that "issues or concerns" could not be found because "from year to year the problems identified change and the problems differ from state to state as well."

G. Charts on Monitoring Findings

The most straightforward method of conveying results from monitoring activities is through graphs or charts. As might reasonably be expected, for the first few years, no charts tallied information collected from monitoring of the states.[274] In the following years, many charts focused, like the accompanying text, on procedural matters, such as the timeliness of complaint turnaround, steps of the monitoring process, and schedules of past and future reviews. Out of the nineteen Reports, less than one half contained charts actually listing areas of state level noncompliance.[275] Seven Reports listed areas of state plan deficiencies; however, these charts addressed plan policies that were corrected prior to a state receiving funding, but did not address the effectiveness of implementation of those policies.[276] For instance, in 1996 state plans were deficient in providing for procedural safeguards, individualized education programs (IEPs), least restrictive environment (LRE), right to education, private school participation, confidentiality, and general supervision. These deficiencies required "clarification or revision," and all such problems were resolved prior to final plan approval.[277]

From 1990 to 1993, such plan deficiency charts were included, but no chart summaries were given reflecting results of compliance monitoring. More recently, the Reports returned to including charts on noncompliance along with, or in place of, plan deficiency summaries. These charts lacked detail, and the categories of noncompliance were broad and undefined, varying from year to year and making longitudinal analysis difficult. Also, the tallies of states that failed to ensure compliance for each category did not identify which states were in violation of their plans. Reports never contained follow-up charts on corrective actions taken by those states found to be out of compliance.

H. Intra-Departmental Policy Conflicts

The Office for Civil Rights (OCR) first became involved in the administration of IDEA in 1981. The Annual Report for that year stated that OCR now had the opportunity to review state annual program plans, but assured that its review of the plans must not exceed 75 days.[278] At that time, OCR was not involved in the complaint management process, but eventually would take over those complaints involving Section 504. OSEP received complaints filed by individuals or entities against SEAs or Local Education Agencies (LEAs). An OSEP "specialist" corresponded with the complainant and forwarded the complaint to the state to resolve. Although OSEP monitored each case until it was resolved, all follow-up action was taken by the state education agency.[279]

From October 15, 1980, until September 1, 1981, OSEP handled 150 complaints and referred to OCR 105 others that also alleged a violation covered by Section 504.[280] Of the 105 referred complaints, 70 concerned placement or related services. In the 1982 Annual Report, DoED reported that OCR had returned or closed 41 cases by August 3, 1981.[281] DoED also reported that OCR took an average of four months to close each case.[282] While no review of OSEP's management of the complaint process was given, the Report discussed problems between OSEP and OCR producing "inconsistent policy interpretations" on "identical issues," leading to the creation of a task force.[283]

In 1983, the Annual Report again analyzed complaints sent to OCR and OCR's turnaround record, although there was no discussion of complaints handled directly by OSEP.[284] Suggestions of cooperation between the two offices appeared in the Eighth Annual Report, which reported data from both offices being used in combination by OSEP to assist states "in improving information collection and remedying the possible problems the information suggest[ed]."[285] While some tension may have existed between OSEP and OCR regarding policy interpretations of the law in the complaint-handling process, it was largely resolved through a Memorandum of Understanding (MOU) between the two offices.[286]

In later Annual Reports, the IDEA complaint process was rarely discussed except in the context of evaluating SEA policies for addressing complaints. Although DoED retained authority to involve itself in complaints based on IDEA that did not involve Section 504, one problem at the state level was a "failure to inform complainants of their right to request that the U.S. Secretary of Education review the state's handling of the complaints."[287] This state responsibility was eliminated, however, with the passage of IDEA '97. OSEP remains "responsible for ensuring that each SEA . . . implements a complaint-management system that satisfies the requirements" set forth in 76.780 B 76.782 of EDGAR.[288]

I. Reports Demonstrate the Evolution of DoED's View of Its Mandate

The Department of Education has moved from a somewhat regulatory to a more cooperative stance vis-a-vis the state programs it oversees. Changes in monitoring procedures, often at the behest of the states, demonstrated the shift in focus, as did the change from language about "rights" and "oversight," to the language of "outcomes" and "efforts."

IDEA anticipated that DoED would play a dual role of assisting states and enforcing the law with respect to the states. Several Annual Reports provided explanations of the law's withholding provision as prologues to discussions of monitoring, but then made no further reference to actual or contemplated use of that provision.[289] Other reports acknowledged that primarily "review activities provide information."[290] DoED's ambiguity about the purpose of monitoring in these contexts suggested a disconnect between monitoring and enforcement.

J. Language Changes

The language in the Table of Contents of the Annual Reports reflected a gradual shift in emphasis. Monitoring discussions were found under the following headings and accompanying subheadings each year:

Table 22: Headings in Annual Reports

1979–1980	What Administrative Mechanisms are in Place?/ ***Monitoring***
1981–1983	Office of Special Education Program's Administration of the Law/***Monitoring***
1984–1986	Assisting States and Localities in Educating All Handicapped Children/*SEP* ***Review*** *of State Programs*
1987–1989	Efforts to Assess and Assure the Effectiveness of Programs Educating Handicapped Children/*Program* ***Review***
1990–1996	Assisting States and Localities in Educating All Children with Disabilities/*Federal Program* ***Review*** *Process*
1997	School Programs and Services/***Monitoring Compliance*** *with IDEA*

DoED moved from labeling its activities as "administration," suggesting federal control, to "assisting," indicating more state control. Additionally, it began by referring to "monitoring" states, implying enforcement, and then shifted to the more open-ended language of "review" and "teams." For instance, "when the SEA is asked to correct identified deficiencies, the PAR (Program Administrative Review) team works with the state by providing technical assistance that enables the SEA to comply with the law."[291] By 1990, enforcement seemed secondary to teaming with and assisting states; review was described as "verification and support of the Corrective Action Plan,"[292] and OSEP began to hold "biannual meetings to exchange information with SEA officials."[293]

K. Trend Toward Partnership with States

Initially, Program Review involved lengthy visits to states and meetings with a variety of stakeholder groups, including teachers and parents. Visits to some LEAs occurred in each state.[294] Program Plans were reviewed each year before money was released to the states.

In 1982, Annual Program Plans begin to receive three-year approval to reduce time and paperwork for states.[295] Additionally, the Bureau's monitoring activities "focused predominantly on assuring and strengthening state capacity to effectively monitor LEAs and public and private agencies."[296] Parent involvement and visits to LEAs were no longer emphasized. DoED put greater emphasis on off-site monitoring of information submitted and data collected, describing those methods as "less intrusive" but "more continuous." It concentrated on developing procedures and obtaining information to create individual state profiles to be regularly reviewed and updated.[297] These changes were made in response to an executive order of January 29, 1981, to reduce the burden and cost on the states and to ensure that regulations were no stricter than the demands of the statute.[298]

By 1983, monitoring consisted of developing screening documents, plus three options: (1) off-site monitoring, (2) on-site monitoring at the state level, or (3) on-site monitoring at the state and local level, although an on-site review was required for each state at least once every three years.[299] After such program review, the SEAs responded with voluntary implementation deadlines, requests for technical assistance, and self-imposed deadlines.[300] These changes seemed to reflect more state autonomy and less direct enforcement. The 1990 Report cited EHA-B 612(6) as "specifically designat[ing] the SEA as the central point of responsibility and accountability."[301] Nonetheless, the Eleventh Annual Report gave reassurance that the review procedure "has the capacity to verify that the requirements of the Act are being carried out."[302] The Report further stated that OSEP would "determine with states the appropriate remedial measures that must be taken to correct identified discrepancies between the requirements and states' policies and procedures."[303] In 1990, a new procedure was implemented.

DoED considered increased reliance on states to perform enforcement activities an appropriate response "to the growing capacity of state education agencies to assure the availability of a free appropriate public education to all handicapped children."[304] "Federal efforts since the enactment of P.L. 94-142 had periodically been modified to provide the states with increasing flexibility to implement the law in a manner consistent with local precedents and resources,"[305] another Report noted. Technical assistance was also increasingly targeted to problems of individual states and coordinated with monitoring activities. In one of the few places an Annual Report focused on a specific problem area, it was discussed in the technical assistance section. The 1983 Report found that states were still "experiencing some difficulty with certain requirements of the laws."[306]

L. Findings and Recommendations

Finding # IV.1A

There was no consistency in either format or content for reporting about IDEA monitoring in the Annual Reports to Congress between 1978 and 1998.

The changing definitions and language used to describe monitoring from one Annual Report to the next made it difficult to compare the status of monitoring/compliance findings over time. Major variations in the content organization of reports published in different years further challenged the reader in locating the information on monitoring.

Finding # IV.1B

The Annual Reports did not provide a picture of how compliance with IDEA changes over time.

A historical or longitudinal analysis of compliance is not required in the Annual Report by law.

Recommendation # IV.1

The Department of Education and the Department of Justice should issue an annual report to the President and Congress on IDEA monitoring, compliance, enforcement, and technical assistance.

The Annual Report issued by DoED is not required to, and therefore does not, report on federal and state level enforcement activities or the due process/judicial system. A joint report by DoED and the Department of Justice to address this information void is needed. This proposed joint report should include a description of all monitoring activities for the year (including corrective action plan follow-up visits), the findings of the monitoring activities in terms of compliance and noncompliance, and a description/analysis of cases in which the Department of Justice is involved. Complaints and investigations of the Department of Education's Office for Civil Rights that are IDEA-related should be presented. The report should present the current activities and findings in a context and format that will allow for historical/longitudinal analysis.

Finding # IV.2

There was little information in the Department of Education's Annual Reports to Congress about the relationship among findings of state noncompliance with IDEA, technical assistance used by states to achieve compliance, and enforcement actions taken for failure to correct noncompliance.

Links between compliance monitoring, technical assistance, and enforcement action were not evident in the Annual Reports, making it difficult to piece together a picture of the state of IDEA compliance across the nation. Reporting on enforcement authority and activity at the federal or state levels, the due process/judicial system, or even court cases in which the Department of Justice is involved is not required by law.

Recommendation # IV.2

The Department of Education and the Department of Justice should routinely issue reports that provide longitudinal analyses tracking noncompliance findings, informal and formal enforcement actions taken by the Federal Government and use of technical assistance resources to correct noncompliance with IDEA for each state over time.

These reports would enable the reader to determine how states have responded to corrective action, technical assistance, and enforcement actions. These reports would provide the data needed to document progress and achievements as well as identify areas that need continued improvement.

Part V presents an overview of some private litigation challenging states' failures to ensure compliance with Part B of IDEA, and describes, in part, the outcomes of key cases impacting state monitoring systems.

V. IDEA Litigation Challenging State Noncompliance

A. Introduction

Under the Individuals with Disabilities Education Act (IDEA), parents and families of children with disabilities play a key role in enforcing the law. They initiate litigation and raise issues that otherwise may not gain attention. In order to pursue these issues, parents must find attorneys who are knowledgeable about IDEA and willing to accept cases where fee payment may be deferred or delayed until the case is settled. In other words, the attorney may not get paid unless the client wins and the court awards attorney's fees. Damages are rarely awarded in these cases, which are often protracted and expensive. During the pendency of the cases, until they are settled, the attorneys must be in a position to work without compensation.

Litigating attorneys in the private bar who are experts on IDEA are not commonplace. Frequently specialty public interest organizations will accept such cases. The Protection and Advocacy systems (P&As), which provide legal representation and advocacy for people with disabilities in every state in the country, represent families in many special education cases.

> ***"As you look at the priorities that are being set by the [P&As], almost all of our cases now are expulsion/suspension cases. We're just trying to keep kids in the classrooms."*****—Curt Decker, Executive Director, National Association of Protection and Advocacy Systems (NAPAS), on the need for OSEP to fund legal advocacy for parents**[307]

They are federally funded to provide such support. Nonprofit organizations such as the Disability Rights Education and Defense Fund (DREDF), the contractor for this report, also provide such representation, but usually without federal funding. Both organizations report that they do not have sufficient resources to respond to all the requests for assistance that they receive from parents of students in special education. Without adequate support these organizations are unable to assist parents in raising issues, such as the following ones, which generate IDEA compliance.

B. Summary of Litigation in California, Illinois, and Texas

In three recent cases, parents have challenged their state's monitoring and enforcement system in failing to address local noncompliance. Although the local education agency (LEA) and, ultimately, the state education agency (SEA) have responsibility for ensuring FAPE to all children with disabilities in the state, when the LEA fails in its responsibility to provide services and the SEA fails to properly monitor and enforce the law, as the following cases reflect, the burden of enforcement falls on parents.

In *Corey H. v. Board of Education of the City of Chicago*, Chicago public school students with disabilities brought a class action against both the City of Chicago Board of Education (CBE) and the Illinois State Board of Education (ISBE).[308] The students sought declaratory and injunctive relief to correct CBE's and ISBE's widespread failure to educate children with disabilities in the least restrictive environment (LRE).[309]

Although CBE agreed to settle with an extensive plan for correcting the LRE violations, ISBE continued to argue that it fulfilled the IDEA's LRE mandate.[310] ISBE claimed that IDEA (20 U.S.C. 1412(6)) requires only that it provide oversight and general supervision of CBE's LRE efforts.[311] ISBE also argued that its monitoring efforts were adequate because OSEP had approved Illinois' state plan including its monitoring plan. The court, however, found that Congress intended to place final responsibility and accountability in one agency, and held that once ISBE had accepted IDEA funds, it was responsible to ensure compliance with the IDEA's LRE requirements.[312] As the court put it, "the evidence presented at trial demonstrates beyond doubt that, despite the fact that the LRE mandate has been on the books since 1975, the Chicago public schools have languished in an atmosphere of separate and unequal education for children with emotional, mental, and behavioral difficulties."[313] The fact that OSEP may have approved Illinois' plan was not dispositive.[314] The court affirmed the right of parents to enforce their children's rights and ensure compliance with IDEA independent of OSEP's actions or inaction. To the court, ISBE clearly violated its duty to establish its own effective monitoring and enforcement system.[315]

The *Corey H.* court found numerous systemic failures in ISBE's monitoring and enforcement of IDEA's LRE requirements: students with low-incidence disabilities were placed in highly restrictive placements, ISBE's funding formula perpetuated segregating children with disabilities, and when the CBE failures were pointed out to ISBE, ISBE took little or no action to ensure the failures were corrected.[316] The court ordered the ISBE to identify and correct its LRE violations, inform its teachers and administrators of their IDEA responsibilities regarding LRE implementation, certify teachers according to LRE requirements, and establish a state funding formula that reimburses local agencies for educating children in the least restrictive environment appropriate to their individual needs. The court has since appointed its own expert to develop an effective monitoring and enforcement system for Illinois. A monitoring system currently in development will closely follow the focused monitoring approach being tested in Texas.

Another recent case challenging a state's failure to monitor and enforce LEA compliance with IDEA is *Angel G. et al. v. TEA*. Filed in 1994, this case was brought by parents on behalf of their children who resided in Texas Residential Care Facilities (RCF). The case alleged that the Texas Education Agency (TEA) failed to meet three responsibilities required of a state education agency by IDEA: (1) child find, (2) development of interagency agreements, and (3) effective monitoring and enforcement of LEA compliance with IDEA.

In 1996, the court in *Angel G.* approved a settlement agreement that resolved both the child find and interagency agreement issues but left open the issue of the effectiveness of TEA's monitoring system. TEA continued to fail to assure that its RCFs provide a free appropriate public education (FAPE) to children and youth with disabilities who reside in these facilities. An independent consultant issued a report finding TEA's monitoring system to be "fundamentally flawed" and recommended that TEA convene a group of experts to develop a replacement or supplemental system of special education monitoring. TEA initially refused to implement this recommendation but later informed the court that it had made substantial changes to its current monitoring system to ensure compliance with IDEA. The court requested that each party submit their plans for an effective special education monitoring system and held oral argument on the adequacy of these plans. Following this hearing, the court issued an order setting the case for an evidentiary hearing to begin on August 9, 1999, and to continue as needed.[317] At this hearing, the court will examine "whether the components of the plan TEA filed in this case on August 14, 1998, are adequate to enable TEA to meet its burden as an SEA...."

In the most recent of these cases challenging the state's monitoring system, a group of eight children with disabilities in East Palo Alto, California, brought a class action lawsuit in November 1996 against their school district, the Ravenswood City Elementary School District, for extensive violations with all of the substantive and procedural requirements of IDEA;[318] (e.g., failure to provide FAPE, extensive LRE violations, failure to ensure parent participation, utilizing discriminatory evaluation procedures, etc.).

The plaintiff children in this case, *Emma C. v. Eastin*, also sued the California Department of Education (CDE) for failing to monitor and enforce the law despite repeated findings of noncompliance in the school district.

After a period of intensive law and motion activity, the U.S. district court made a number of critical rulings in *Emma C.* The court held that (1) all available remedies, including money damages and compensatory education, are available under IDEA against the CDE and against members of California's Board of Education in their individual capacities; (2) that the nature of the systemic problems alleged in the suit made exhaustion of administrative remedies futile and therefore unnecessary; and (3) that the CDE was at that time incapable of ensuring compliance in the district because of the substantial inadequacies in its own monitoring and complaint systems.[319] The court certified a class comprised of all past, present and future special education students in the district.

Following these court rulings, the plaintiff children in *Emma C.* and the CDE entered into a tentative settlement agreement in which CDE agreed to undertake a comprehensive step by step approach to bring Ravenswood into compliance. Plaintiffs also reached agreement with the district in which the district primarily agreed to abide by any corrective action plan developed by the state and independent monitors and provided for compensatory education to all eligible children.

Plaintiffs and the CDE are negotiating an agreement to change California's monitoring system to the focused monitoring approach proposed by the plaintiffs in the *Angel G.* litigation. The CDE has taken substantial steps already to convert to this approach, including commitment to a pilot program to test whether it will result in greater compliance.

C. Development of More Effective Monitoring Systems

A group of these experts convened by the plaintiffs designed a proposed focused monitoring system for Texas.[320] Known as the Chicago Group because the meeting was held in Chicago, these experts continue to flesh out the details of the system.[321] In addition, advocates and experts in the states of Texas, California, and Illinois are reviewing the proposed system to refine and delineate it and address the many related complex issues. The state of California has committed to adopting this focused monitoring system and planned to conduct its first pilot program in 1999. The following is an overview of the proposed focused monitoring system.

The Texas work articulated five principles that provide the underpinnings for an effective state IDEA monitoring system. The system must (1) address all legal requirements and educational results for students, (2) include public involvement, (3) build on existing student data to increase system efficiency, (4) direct resources to areas of greatest need, and (5) result in timely verification or enforcement of compliance. Their approach is based on the notion of continuous improvement with a data-based accountability system.[322]

The three components of the compliance monitoring system are (1) performance review, (2) policy review, and (3) complaint management. These three system components take place within the context of three ongoing activities: (1) the Comprehensive System of Personnel Development (CSPD), (2) oversight and enforcement, and (3) data design, analysis, and review.[323]

At the heart of this system is the performance review process, which works as follows. The state agency conducts a performance review of each LEA. The outcome of the review is used by the SEA, in part, to place LEAs into one of four categories: (1) Continuous Improvement District —no additional compliance activities required by the state agency; (2) Data Validation District—sixty LEAs randomly selected annually to verify reported data and examine procedural compliance; (3) At-Risk District—self-study supplement to district improvement plan required; or (4) Focused-monitoring district—on-site investigation of specific areas of noncompliance conducted by the state.[324]

In order to determine the category of each LEA, the state must develop a template for analyzing special education performance data and measuring compliance. Critical variables or indicators must be determined. Variables could include measures of graduation rates, drop-out rates, academic achievement levels, and placement (LRE) data. Standards must be developed for three types of trigger values. The first trigger value, which would apply to each variable, is the "at-risk" trigger. This trigger identifies LEAs that are "at risk" in their performance in that area. Critical variables would receive one trigger in addition to the "at risk" trigger. The second trigger for critical variables is the focused monitoring trigger, which identifies the districts that will receive a focused monitoring visit. The third value is used as a benchmark for each critical variable. The benchmark serves as the statewide performance goal for the critical variables designed to improve the performance levels.[325]

The focused district monitoring occurs when an LEA exceeds the trigger for any critical data variable. The state creates an investigation plan that is tailored to the identified areas of noncompliance prior to the visit. The plan is individualized for each LEA and must incorporate several features including focusing on measurable data that indicate compliance or noncompliance with the identified issue, classroom observation, and input from parents and students. Districts that are designated as "at-risk" or "focused monitoring" must have plans for correcting areas of noncompliance. Technical assistance and personnel training should be provided to the LEA by the SEA if needed. The SEA must develop written procedures that outline the progression from noncompliance findings to enforcement so that they are consistently applied for each noncompliant LEA. These procedures should be clear to LEAs so that there is no doubt about the consequences for ongoing noncompliance.[326]

Likewise, the state must have a system of progressive sanctions to use whenever any LEA fails to correct noncompliance within a specific time line. The proposed range of sanctions is as follows in ascending order:

- Mandatory First-Level Sanctions require the state to send a letter of continued noncompliance to all families of students with disabilities served by the LEA and members of the state legislature.

- A public hearing is held by the district's school board and the noncompliance information is a consideration in the evaluation of the LEA superintendent and relevant principals.

- Mandatory Second Level Sanctions, which are to be implemented within 60 days of the first level of sanctions if noncompliance continues, require lowered accreditation of the noncompliant LEA and suspension or termination of responsible administrative officials.

- Mandatory Third Level Sanctions, which are imposed 60 days after Level 2 sanctions if noncompliance continues, require a choice of one of the following options: (1) transference of federal and state special education funds to a neighboring LEA for oversight of the provision of special education in the noncompliant district; (2) partial withholding of federal and state special education funds while the LEA must continue to provide required services; (3) withholding of all federal and state special education funds while the LEA must continue to provide required services; and (4) recovery by the state of previously awarded federal and state funds.[327]

The elements of this proposed system have potential for correcting some long-standing weaknesses in Texas, California, and Illinois state monitoring. The proposed system has been implemented on a "pilot" basis only in California; more time is needed to test its effectiveness.

D. Findings and Recommendations

Finding # V.1

Parent advocacy and litigation have been critical means for exposing and remedying persistent and systemic IDEA noncompliance.

The law depends on litigation in order to function effectively. Parents of children with disabilities are uniquely situated to identify and raise the legal issues related to persistent noncompliance with IDEA. Their financial situations, however, typically do not permit sustained private legal action, and not enough public resources are available to assist them.

Recommendation # V.1A

Whenever Congress and the President approve an increase in the funding to be distributed to local schools under Part B of IDEA, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total Part B increase to fund free or low-cost legal advocacy services to students with disabilities and their parents through public and private legal service providers, putting competent legal assistance within their financial reach and leveling the playing field between them and their local school districts.

Litigation by parents is still a necessary recourse when administrative action at the state level to obtain FAPE for their child has failed. In some states, litigation has also been a vital catalyst to a more effective implementation of IDEA across the board. Access to legal assistance that could result in obtaining an appropriate education for their children remains beyond the financial reach of too many families. Federal funds currently available for low-cost legal services under the Developmental Disabilities Act, the Technical Assistance Act, the Rehabilitation Act, and the Protection and Advocacy for Individuals with Mental Illness Act must be supplemented to begin to address the need. This will be a start toward putting families on a more equal playing field with school districts that use tax dollars to hire legal counsel to assist them in avoiding compliance with IDEA requirements.

Recommendation # V.1B

OSEP should endorse the allocation of additional funding to public and private legal service providers, including the state PTIs, P&As, and IL centers, the private bar and nonprofit legal

services centers, for the purpose of carrying out a coordinated strategy for making legal advocacy services more available to students with disabilities and their families.

Finding # V.2

Pilot programs in compliance monitoring and enforcement at the state level are testing the use of a broad range of flexible enforcement options in the context of corrective action plans linking specific noncompliance findings with agreed upon enforcement options and time lines.

Recommendation # V.2

OSEP should develop and test the use of state compliance agreements that incorporate appropriate sanctions selected from a broad range of enforcement options, and link them to the state's failure to correct specific noncompliant conditions within the agreed time frame.

OSEP should also encourage the state's use of sanctions in this manner when the state's compliance monitoring indicates that LEAs are failing to correct findings of noncompliance.

Part VI provides an overview of the role of the Department of Justice in enforcing IDEA through participation in litigation.

VI. The Role of the Department of Justice

A. Functions of the Department of Justice

Two divisions of the Department of Justice (DOJ) have participated in appellate litigation for the Individuals with Disabilities Education Act (IDEA) during the past 25 years—the Appellate Section of the Civil Rights Division and the Appellate Section of the Civil Division.[328] The Appellate Section of the Civil Rights Division indicates that it finds cases to participate in by searching legal publications and reports. The Civil Rights Division is rarely approached by advocates or outside attorneys for participation in a case, but has met with advocacy groups (e.g., P&As) to ask for their assistance in identifying cases that might permit *amicus* participation.[329] It intends to increase these kinds of outreach efforts to advocates in the future, as well as coordination with the Department of Education (DoED) on DOJ's *amicus* participation in IDEA cases.[330]

B. IDEA Litigation in Which the Department of Justice Has Participated

For this study, the National Council on Disability (NCD) requested a docket of IDEA cases in which the Department of Justice had participated since the law's enactment. DOJ did not have such a list, but constructed the following one for this study. It only includes cases at the Supreme Court and Appellate Court levels. While DOJ has participated in IDEA cases at the district level, a list of these cases was not provided. The Department suggested that project staff could find cases DOJ had participated in at the district level in *WestLaw*. While a number of district level cases were identified, a complete list is not included in this report.[331]

The following table lists 26 cases that DOJ provided for this study. DOJ participated in five cases heard by the Supreme Court and 21 appellate cases. Thirteen of the cases appear to support children's educational rights under IDEA. Several cases each concern private school placements and administrative issues. In one case, DOJ represented the Department of Education in its efforts to withhold IDEA funds from the state of Virginia for substantial noncompliance. While DOJ's role cannot be entirely deduced from the information available, attorneys familiar with IDEA litigation issues think DOJ has generally taken positions supporting the claims of students with disabilities and their families.

Table 23: IDEA Litigation in Which DOJ Has Participated

Case	Issue(s) Considered by the Court
Board of Education of Hendrick Hudson Central School District v. Rowley, et al. 458 U.S. 176 (1982)	The United States filed an *amicus* brief arguing: (1) that an individualized education program devised for a particular child with a disability does not satisfy the requirements of the EHA [Education for All Handicapped Children Act] solely because it is consistent with the relevant state plan submitted to the Secretary of Education; (2) that the district court properly determined that sign language interpreter services should be provided to the child under the EHA, and (3) that the district court properly granted injunctive relief extending beyond the school year covered by the individualized education program for which respondent sought judicial review.
Cedar Rapids v. Garrett F. 119 S.Ct. 992 (1999)	The United States filed a brief on the issue of what qualifies as related services under IDEA. The United States argued that the "related services" IDEA requires schools to provide to students with disabilities include medical services, as long as the service is not one usually administered by a physician.
Lora v. Board of Education of the City of New York 623 F. 2d 240 (2nd Cir. 1980)	This case involved the issue of whether plaintiffs claiming a violation of the EHA were required to exhaust state administrative remedies before they could assert a private right of action in federal court.

Case	Issue(s) Considered by the Court
S-1 v. Turlington 635 F.2d 342 (5th Cir.), cert denied, 454 U.S. 1030 (1981)	The United States filed an *amicus* brief supporting the district court's holding that IQ tests used for BMR placement had not been validated as required by the EHA, assuring that EHA funds were administered in a manner consistent with the terms of the Act.
Larry P. v. Riles 793 F.2d 969 (9th Cir. 1984)	The United States filed an *amicus* brief supporting the district court's holding that IQ tests used for BMR placement had not been validated as required by the EHA, assuring that EHA funds were administered in a manner consistent with the terms of the Act.
Commonwealth of Massachusetts v. Secretary of HHS 816 F.2d 796 (1st Cir. 1987)	This case involved Tucker Act jurisdiction and its effect on district court and appellate jurisdiction. It also raised the question whether the Secretary's interpretation of the scope of Medicaid coverage to exclude special education and related services to be provided under federal Education for All Handicapped Children Act and state education laws was reasonable and therefore should have been upheld.
Georgia Association of Retarded Citizens v. McDaniel 716 F.2d 1565 (11th Cir. 1983), cert. granted and judgment vacated, 468 U.S. 1213 (1984), decision on remand, 740 F. 2d 902 (11th Cir. 1984)	The United States argued that a school district violated the EHA by limiting all educational programs for children with disabilities to 180 days, and that children with severe disabilities might need summer programs.

Case	Issue(s) Considered by the Court
Timothy W. v. Rochester, New Hampshire, Sch. Dist., 875 F.2d 954 (1st Cir.), cert. denied, 493 U.S. 983 (1989)	The United States argued that a school district court may not refuse to provide a child with a serious disability a free appropriate public education based on its determination that the child would not benefit from the educational services.
Sacramento City Unified School District v. Holland 14 F.3d 1398 (9th Cir.), cert denied, 512 U.S. 1207 (1994)	The United States argued that, for a moderately retarded elementary school child, the least restrictive environment is a full-time placement in a regular class, with some modification to the curriculum and with the assistance of a part-time aide.
Virginia Dept. of Education v. Riley 23 F. 3d 80 (4th Cir. 1994) (No. 94-1411), and 86 F.3d 1337 (4th Cir. 1996) (No. 95-2627), vacated on rehearing *en banc*, 106 F. 3d 559 (1997)	The Justice Department defended the Department of Education's interpretation of the IDEA as requiring that participating states continue to provide educational services to children with disabilities during expulsion or long-term suspension for misconduct unrelated to their disabilities, and its decision to withhold funding from the Commonwealth of Virginia for refusal to provide such services. In No. 94-1411, DOJ argued that IDEA's notice and hearing requirements were inapplicable because Virginia did not have an approved state plan under the Act. In No. 95-2627, DOJ argued that the post-hearing decision to withhold IDEA funding from Virginia for noncompliance was both appropriate and mandated by the Act.
Doe. v. Oak Park 115 F.3d 1273 (7th Cir.), cert. denied, 118 S. Ct. 564 (1997)	The United States filed a brief arguing that children with disabilities who are expelled from school must nonetheless be afforded education services.

Case	Issue(s) Considered by the Court
K.R. v. Anderson Community Sch. Corp. 81 F.3d 673 (7th Cir. 1996), vacated, 521 U.S. 1114 (1997), on remand, 125 F.3d 1017 (7th Cir. 1997), cert. denied, 118 S. Ct. 1360 (1998)	The United States argued that the 1997 amendments to IDEA establish that public schools do not have to provide to students in private schools publicly supported special education services comparable to those provided public school students.
Fowler v. Unified School District No 259, 128, F.3d 1423 (10th Cir. 1997)	The United States argued in its *amicus* brief that where parents voluntarily place their child in a private school despite being offered an appropriate educational placement in the public school, the local school district is not obligated under federal law to provide any state-supported services to the child. The district must pay only a share of federal funds.
Marie O. v. Edgar 131 F.3d 610 (7th Cir. 1997)	The United States filed a brief (that was cited in the court of appeals opinion) arguing that IDEA required school systems to provide services for children below the age of three.
Hartmann v. Loudoun County 118 F.3d 966 (4th Cir. 1997), cert.denied, 118 S. Ct. 688 (1998)	The United States filed a brief in the Fourth Circuit in support of a district court holding that a child with a disability should be educated in a regular classroom. The United States emphasized IDEA's provision that children should be educated in the least restrictive alternative available.
Bradley v. Arkansas Dept. of Education (8th Cir. No. 98-1010)	The United States intervened and filed a brief defending the constitutionality of IDEA.

Case	Issue(s) Considered by the Court
Jim C. v. Arkansas (8th Cir. No. 98-1830) *K.L. v. Valdez* (10th Cir. No. 96-2278) *Mauney v. Arkansas* (8th Cir. No. 98-1721)	In all three cases, the United States filed briefs arguing that Congress abrogated sovereign immunity when passing IDEA, and so IDEA could be applied to the states.
Board. of Ed. of Lagrange Sch. Dist. No. 105 v. Illinois Bd. Of Ed. (7th Circuit, No. 98-4077)	The United States filed an *amicus* brief supporting placement of a pre-schooler in a classroom with nondisabled students and requiring the school district to pay for this private placement.
Honig v. Doe 484 U.S. 305 (1988)	The United States filed a brief arguing that the district court abused its discretion in enjoining the school district from indefinitely suspending a student with an emotional disability for dangerous or disruptive conduct growing out of his disability, pending completion of expulsion proceedings.
Tribble v. Montgomery County Board of Education 798 F. Supp. 668 (M.D. Ala. 1992), appeal dismissed (11th Cir. 1993)	The United States filed an *amicus* brief arguing that IDEA does not require the school district to provide a child with a disability who is voluntarily enrolled by his parents in a private school with such "related services" as physical, speech, and occupational therapy, and the transportation necessary to secure such services, where the school district stands ready to provide the child with a free appropriate public education in a public school setting.
Metropolitan School District of Wayne Township v. Davila 969 F.2d 485 (7th Cir. 1992), cert. denied, 507 U.S. 949 (1993)	The United States took the position that IDEA requires participating states to continue providing educational services to children with disabilities during periods of expulsion or long-term suspension for misconduct unrelated to their disabilities.
Zobrest v. Catalina Foothills School District 509 U.S. 1 (1993)	The United States filed an *amicus* brief arguing that the Establishment Clause does not preclude a school district from using IDEA funds to provide a hearing-impaired child voluntarily enrolled in a sectarian school with a sign language interpreter.

Case	Issue(s) Considered by the Court
Florence County School District v. Carter 510 U.S. 7 (1993)	The United States filed an *amicus* brief arguing that a school district that has failed to provide a free appropriate public education under the IDEA may be ordered to reimburse parents who unilaterally withdrew their child from public school, put the child in a private school, and did not satisfy the Act's procedural requirements, but met the child's educational needs.
Cefalu v. East Baton Rouge Parish School Board. 117 F. 3d 231 (5th Cir., 1997)	The United States filed an *amicus* brief on petition for rehearing, taking the position that the IDEA imposed no obligation on the school district to provide a hearing-impaired student with an on-site sign language interpreter at a private parochial school in which he was voluntarily enrolled by his parents, so long as a free appropriate public education had been made available to the student.

C. Findings and Recommendations

Finding #VI.1

The Department of Justice does not have independent authority under IDEA to pursue IDEA investigations and enforcement against noncompliant educational entities.

The Department of Justice can pursue enforcement action against state educational entities only if a referral is made from the Department of Education.

Recommendation # VI.1

Congress should amend IDEA to provide the Department of Justice with independent authority to investigate and litigate against school districts or states where pattern and practice violations of IDEA exist.

The Department of Justice should play a greater role overall in the enforcement of IDEA. DOJ is not plagued by the conflicting roles of grant manager and law enforcer with the same entity. As an agency that specializes primarily in enforcing the law, DOJ's first responsibility is to those protected by the laws it enforces. DOJ is not as susceptible to political pressure from states and their Congressional delegations when initiating enforcement action because it has no pre-existing economic relationship (grant maker–grantee) with the defendant. DOJ can initiate an investigation upon receiving a complaint or other information and coordinate with the Department of Education throughout case development. Information about coordinated enforcement activities should be included in DOJ's Annual Report to Congress.

Finding # VI.2

The Department of Justice has played a minimal role in IDEA litigation, participating in only 26 IDEA cases at the Supreme Court and Appellate Court levels in the past 25 years.

Recommendation # VI.2

The Department of Justice should exercise greater leadership in IDEA enforcement by initiating litigation against noncompliant states, publicizing its actions, and collaborating with stakeholders on their legal stance and its implications.

The Department of Justice should take the initiative to identify key cases involving noncompliance with important provisions of IDEA, such as LRE, and aggressively litigate to put noncompliant states on notice that the law is now being enforced. In doing so, DOJ should actively seek the input of key stakeholders on their legal positions vis-a-vis these cases and the policy implications.

Finding # VI.3

The Department of Justice has no structured mechanism for finding or determining what IDEA cases to participate in, other than reviewing legal journals and networking informally with advocacy groups.

Recommendation # VI.3

The Department of Justice should develop a system for tracking and monitoring litigation related to IDEA and articulate explicit criteria for determining DOJ participation.

Part VII examines a variety of technical assistance vehicles and initiatives funded by the Department of Education and makes recommendations concerning the targeted use of specifically designed technical assistance programs to improve compliance nationally.

VII. Improving Public Awareness: Technical Assistance and Public Information for Students with Disabilities, Their Families, and Advocates

A. Department of Education—Overview

The Individuals with Disabilities Act (IDEA) has always authorized technical assistance initiatives. Some are directed to states and other service-providing entities; others are intended for the public generally. Still others are directed to addressing the technical assistance needs of students with disabilities, their families, and their advocates in obtaining the services and supports that must be made available to students with disabilities under the law. For Fiscal Year 1999, $44.5 million was appropriated for IDEA technical assistance and dissemination. These funds provide for "technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support states and local entities in building capacity, to improve early intervention, educational and transitional services, and results for children with disabilities and their families and address systemic-change goals and priorities."[332] In accordance with this authority, the Office of Special Education Programs (OSEP) has funded three primary technical assistance programs for Fiscal Year 1999 for students with disabilities, their parents and families, and advocates. They are the National Information Center for Children and Youth with Disabilities (NICHCY); The Families and Advocates Partnership for Education (FAPE) project of the Minnesota parent organization (the PACER Center); and the Parent Training and Information (PTI) centers, including the Technical Assistance Alliance, also managed by the PACER Center, which provides technical assistance to the PTIs.

As a result of the 1997 Reauthorization, OSEP funded Partnership Projects to provide technical assistance to membership associations representing four different stakeholder groups involved with the implementation of IDEA: families and advocacy groups, service providers, local school administrators and policy-makers. Begun in October 1998, Partnership Projects consists of collaborative initiatives by all four stakeholder groups to ensure that their grassroots constituents get consistent information about the Reauthorization changes, as well as best practices for effectively implementing IDEA. The Partnership initiative also has a coordinating committee that works on addressing implementation issues raised by any stakeholder group from all stakeholder perspectives.

Under other legislative authorities, the National Institute on Disability & Rehabilitation Research (NIDRR), the Rehabilitation Services Administration (RSA), and the Department of Education's (DoED's) Office for Civil Rights (OCR) each also play a role in providing IDEA- or education-related technical assistance, information, and materials for students with disabilities, their parents, and families.

1. OSEP

a. National Information Center for Children and Youth with Disabilities

The National Information Center for Children and Youth with Disabilities (NICHCY) is an information and resource clearinghouse. NICHCY is an OSEP initiative that provides information on children and youth with disabilities (birth to age 22). In Fiscal Year 1999, NICHCY received $1.1 million to operate a clearinghouse that offers a toll-free number and a web site providing information and materials about children and youth with disabilities, special education, IDEA, and related matters. NICHCY receives about 40,000 contacts per year—including phone calls, e-mail, and mail requests for referral, information, or technical assistance. About half of these contacts are from professionals and about half from children with disabilities and their families. NICHCY's web site provides descriptions of and price information about all printed publications that it makes available. Most are accessible at the web site and can be printed out free of charge. NICHCY's web site also offers a text-only version for individuals with vision disabilities who may be using a screen reader. Materials provided by NICHCY are available on computer disk by request.

b. The Families and Advocates Partnership for Education (FAPE) Project

In 1998 OSEP awarded $6 million in grants for national education and outreach about IDEA 1997. Four grants of $1.5 million each per year for up to five years were awarded to three organizations. Of the three grantees, the parent-run PACER Center based in Minneapolis, Minnesota, provides material and information specifically for students, their families, and advocates. The other grantees were the National Association of State Directors of Special Education and the Council for Exceptional Children, which was awarded two grants.

c. Parent Training and Information (PTI) Centers and the Technical Assistance Alliance

The largest source of technical assistance and information for students, families, and their advocates is the OSEP Parent Training and Information (PTI) centers funded at $18.5 million for Fiscal Year 1999 through the OSEP Parent Program. There is at least one PTI center in each state. Also supported under this funding initiative is the Technical Assistance Alliance managed by the PACER Center, which provides technical assistance to the PTIs. Parent Training and Information centers typically provide training and information about various special education topics for parents, families, and children living in the areas served by the individual centers.

The goals of the Parent Program are to provide information, training, and support to the families of children with disabilities in becoming more effective advocates for the supports and services their children need to receive the benefits of a free appropriate public education under IDEA. The Parent Program recognizes the critical role of parents in their children's education and aims at preparing them to be active participants in the Individualized Education Program (IEP) process, eligibility, and placement decisions. Most important, the program seeks to impart information about the procedural safeguards available when the system is out of compliance with the law. These goals are accomplished through general and specific training, workshops, and presentations, as well as through printed material(s), newsletters, web sites, and individual support and advocacy. This training and support focuses on both individual advocacy and systems advocacy.[333]

PTI services, therefore, can include assisting parents in understanding the nature of their child's disability and education needs; providing information about ways parents can communicate effectively with service-providing personnel; helping parents participate in the IEP process; assisting parents in obtaining appropriate information about the range of options, programs, services, and resources available; helping parents understand IDEA procedural safeguards; and assisting parents in understanding IDEA and participation in school reform activities.[334]

The PTIs are currently assembling a comprehensive list of their combined technical assistance, training, and informational materials for parents and families. The list had not been completed nor was preliminary information available during the course of this study. The PTIs are also working on a report showing how many students, parents, families, and others annually receive some form of technical assistance from the various centers, but it also had not yet been completed at the conclusion of this study, and preliminary data were not available.

d. The Technical Assistance Alliance for Parent Centers

The Technical Assistance Alliance for Parent Centers (the Alliance) has served as the coordinating office for the Technical Assistance to Parent Projects since October 1, 1997. The Alliance provides technical assistance for establishing, developing, and coordinating Parent Training and Information centers under IDEA. The Alliance maintains a web site with links to PTIs and other parent resources and organizations. The site is available in a text-only as well as a graphic format. On request the Alliance provides technical assistance materials on audiotape and in large print, and audio described and captioned videos.

e. Technical Assistance to Indian Communities

OSEP has worked closely with parents, educators, tribal leaders, and advocates in the Native American community. For example, OSEP staff participated in the National Indian School Board Association's 1997 and 1998 annual conferences and the National Indian Education Association's 1998 conference, conducting focus groups and individual meetings with parents, tribal leaders, and advocates. In 1999, OSEP provided an intensive two-day training for

Bureau of Indian Affairs (BIA) staff, including non-central office staff. OSEP has also worked with BIA staff in providing training to OSEP monitoring staff regarding Native American cultures. OSEP will be working closely in the future with BIA's newly created special education advisory board.

Despite OSEP's increased efforts, Native American leaders report a lack of general knowledge among local people about the law, their rights under the law, and the role of BIA in ensuring that all requirements of Part B are met. Improved implementation of IDEA in Native American communities depends, in part, on effective participation by parents of children with disabilities, tribal leaders, and representatives from national Indian education organizations on the advisory boards and steering committees directing BIA efforts.

2. National Institute on Disability and Rehabilitation Research (NIDRR)

The National Institute on Disability and Rehabilitation Research (NIDRR), one of three OSERS programs, undertakes research related to the rehabilitation of individuals with disabilities. Some NIDRR projects include the development of training, technical assistance, and other general materials related to IDEA or other special education issues. Some projects develop materials specifically for parents and families. Others are aimed at various professional audiences but may be of general interest to parents. NIDRR also administers the Protection & Advocacy for Assistive Technology (PAAT) program, created in 1994 when Congress expanded the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act) to include funding for Parent and Advocacy systems (P&As) to "assist individuals with disabilities and their family members, guardians, advocates, and authorized representatives in accessing technology devices and assistive technology services" through case management, legal representation, and self-advocacy training.

3. Rehabilitation Services Administration (RSA)

RSA administers the Protection and Advocacy for Individual Rights (PAIR) program, established by Congress as a national program under the Rehabilitation Act in 1993. PAIR programs were created to protect and advocate for the legal and human rights of persons with disabilities who were not covered by previous legislation.

4. Office for Civil Rights

The Office for Civil Rights (OCR) regularly provides technical assistance to parents and educators on rights under Section 504 and Title II of the Americans with Disabilities Act (ADA) through presentations at conferences, community meetings, published materials, and posting of information on DoED's web site. A toll-free number, staffed at the OCR headquarters office in Washington, DC, handled nearly 5,000 inquires in FY 1998.[335] OCR staff members at headquarters and in the 12 enforcement offices throughout the country handle many more inquiries from students and parents by telephone, written correspondence, and electronic mail. In addition, OCR provides technical assistance on the rights of students with disabilities to the students themselves, their families, and educators in conjunction with the investigation of disability complaints, which make up 60% of OCR's total complaint receipts.[336]

5. Department of Health and Human Services—Administration on Developmental Disabilities

The Administration for Children, Youth, and Families' Administration on Developmental Disabilities (ADD) administers the Protection and Advocacy for Persons with Developmental Disabilities (PADD) program, a system in each state and territory that provides protection of the rights of persons with disabilities through legally based advocacy. The P&As system was created by the Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975.

The National Association of Protection and Advocacy Systems (NAPAS) reports providing about 250,000 individuals annually with information, technical assistance, and referral to other resources. Of this number, approximately 40,000 students with disabilities, their parents, and their families are provided with information related to their educational rights and responsibilities under IDEA. NAPAS also reports representing approximately 19,000 students with disabilities in IDEA matters either with informal or formal advocacy, or representation at administrative hearings or in court.[337]

B. Resource List of IDEA and Education-Related Technical Assistance, Training, and Informational Materials Collection Approach

In an effort to identify federally funded IDEA- and education-related technical assistance and informational materials for students with disabilities, parents, and families, lists of materials were collected from sources that could verify federal support for the creation of the documents. These sources included NICHCY, the National Rehabilitation Information Center (NARIC)—a NIDRR project that collects and disseminates the results of federally funded research projects—some individual PTI centers, the Technical Assistance Alliance, NAPAS, and several NIDRR-funded grantees. A database was created that assigned the titles to one of two audience categories: Category One—students, parents and families, and advocates; Category Two—general audience. Those titles included in the general audience category were also considered useful to parents, although they are not the intended primary audience as far as could be discerned from indicators such as the works' title, abstract, source, and keywords.

Titles were not included when professionals were clearly the intended audience, or applicability to and interest for parents and families was not apparent. If the information was available, the database also includes a notation if the materials are available in languages other than English, and whether the list's source—web site or larger databases such as found on NARIC for example—indicated whether the materials are available in alternative formats such as audiotape, disk, or Braille.

Two hundred eighteen federally funded education or IDEA technical assistance, training, public, or general information titles were identified that were either created for parents and families or that are potentially useful to them. Of these, 66 appear aimed at either a general or a professional audience, but could be of interest to parents and families; and 152 were specifically created for students with disabilities, their parents and families, and advocates. Three are advertised as available in Braille; four are videos; three of the videos provide captioning. Fortyeight titles are available in languages other than English; 90 titles are available in full text format on the web. The titles were assigned to the 24 content categories in the following table:

Table 24: IDEA/Education-Related Technical Assistance Materials and Information

Category	**Number of Titles**
Technology	34
General Interest	20
Disability/Diagnosis	23
Transition	22
Law/Rights	30
Advocacy/Communication	14
Individualized Education Plan	12
Resources	11
Inclusion	9
Assessment	8
Related Services	6
For Students Only	4
Juvenile Justice	4
Discipline	4
Due Process	4
Families	3
Organizing	2
Mediation, Literature, Gender, Culture, Private Schools, Culturally Appropriate Services, Least Restrictive Environment and Miscellaneous	8 (1 ea.)
Total	**218**

C. Findings and Recommendations

Finding # VII.1

During 1999, OSEP committed about one-third of its technical assistance resources to informational programs for students, parents, and families—an increase from previous years.

This increase showed a clear commitment to enhancing the ability of students and parents to participate in the educational planning process by developing and disseminating training and informational materials and resources, providing peer and professional support, and strengthening parent organizations through capacity building.

Recommendation # VII.1

The Office of Special Education and Rehabilitative Services (OSERS) should strongly promote inter- and intra-agency collaboration to leverage existing resources available to help states correct areas of noncompliance. The objective of this collaboration should be to make available the technical assistance materials and programs state education agencies (SEAs) and local education agencies (LEAs) may request or be required to accept in order to correct specific noncompliance problems.

Finding # VII.2

Only 2 percent of OSERS' resource list publications provided support and information to students themselves in planning their own educational and transition programs.

OSERS' resource materials and programs needed greater emphasis on helping students with disabilities to understand and advocate for their civil rights as students in public schools, and in the transition to living as adults with disabilities in their communities. As OSERS continues to stress transition from school to work and community life, students and their parents must understand how IDEA, ADA, the Fair Housing Act (FHAA), and Section 504 of the Rehabilitation Act affect their opportunities for meaningful integration, employment, and access to post-secondary educational programs.

Recommendation # VII.2

OSERS should prepare students for effective self-advocacy in their education planning and transition to employment and independent living by (1) expanding its resource publications dealing with these issues, (2) developing training initiatives and technical assistance materials, and (3) supporting model student-led self-advocacy programs.

OSEP should develop materials and provide training for students with disabilities and their parents about the provisions of the ADA, Section 504, FHAA, and other pertinent disability laws to help young adults with disabilities understand their civil rights and inform them about the programs available to assist their transition from school to independent living in the community, employment, and post secondary education. Greater emphasis on self-advocacy also will prepare students with disabilities and their families to support state and federal compliance monitoring and enforcement activities more effectively.

Finding # VII.3

OSEP's outreach priorities and resource materials did not address judicial interpretations of IDEA and OSEP policies in a way that assists students with disabilities and their parents in understanding of their implications.

Since schools are familiar with legal developments, students and parents can be disadvantaged without this same information.

Recommendation # VII.3

OSEP should fund the development of materials and provide training and technical assistance for parents and students on the implications of judicial interpretations of IDEA court cases and OSEP policies.

Finding # VII.4

Current technical assistance initiatives have not met the need for materials, training and technical assistance to help students with disabilities and their parents understand and evaluate their states' monitoring system.

Recommendation # VII.4

OSEP should initiate and develop a program to train students with disabilities and parents in evaluating the effectiveness of their state's IDEA compliance monitoring systems and their state's self-assessment process.

Finding # VII.5

Twenty-two percent of technical assistance and informational materials from the resource list were either directed to non-English speaking audiences or available in languages other than English.

Recommendation # VII.5

OSERS should continue to expand its initiatives to serve non-English speaking groups and create culturally appropriate training materials by (1) increasing outreach to minority students and parents, (2) enhancing the capability of the Technical Assistance Alliance, PTIs, the National Rehabilitation Information Center (NARIC), and NIDRR research projects to create culturally appropriate non-English language materials, and (3) translating more existing materials into languages other than English.

This percentage is a notable increase from previous years, yet there are still too few culturally appropriate materials available in languages other than English in relation to the number of students and their families needing them.

Finding # VII.6

The need for training of students with disabilities and their parents in the requirements of IDEA is especially urgent in communities where noncompliance persists over time. Despite a steady increase over time in the amount of technical assistance materials available to under-served populations of students with disabilities and their families, noncompliance still tends to persist at a higher rate and over longer periods of time in these communities.

The resource list shows that materials are still scarce for students with disabilities in the juvenile justice, immigration, and naturalization and child welfare systems, as well as for students attending schools operated or funded by the BIA. Multicultural and language-appropriate materials for these groups are scarcer still.

Recommendation # VII.6A

OSEP should expand its program support for initiatives that promote educational opportunities and rights for under-served populations of children and youth with disabilities and their families. More programs are needed to explain IDEA's requirements in light of the unique needs of students with disabilities involved in the juvenile justice, immigration, and naturalization and child welfare systems, as well as in schools operated or funded by BIA, to their families and advocates, as follows:

- ***culturally appropriate technical assistance to ensure the ability of Native American children with disabilities, their families, tribal leaders, and advocates in every interested tribe to participate as full partners in implementing IDEA in their communities. Culturally appropriate training and technical assistance should be developed and delivered through the satellite offices of disability technical assistance centers (DBTACs) around the country that are managed and staffed primarily by Native Americans.***
- ***training of the appropriate players in the juvenile justice system, including judicial and institutional personnel, in IDEA's civil rights requirements, how they apply within the juvenile justice system, and ways the law can be used to help minimize detention of children with disabilities in the juvenile justice system.***
- ***training of the appropriate players in the immigration and naturalization and child welfare systems, including federal and state agency, judicial, and institutional personnel, in IDEA's civil rights requirements.***

Recommendation # VII.6B

OSEP, in conjunction with the Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP), should also fund training programs for special education lawyers on applying IDEA in the criminal justice system, and for public defenders and staff on IDEA's educational requirements to enable both to advocate more effectively for the

educational rights of students with disabilities involved in state and local criminal justice systems.

Finding # VII.7A

The Department of Education's IDEA technical assistance program addressed a wide range of important information and training needs. The overall strategy, however, did not seem to place priority on developing a comprehensive, coordinated, and targeted technical assistance system in each state focused on empowering students with disabilities and their families for effective self-advocacy to address documented areas of noncompliance statewide.

Finding # VII.7B

The advocacy training programs and services available in most states fell far short of the existing need.

Recommendation # VII.7

The Department of Education should give priority support to the formation of a comprehensive, high quality, and coordinated technical assistance system in each state by developing a separate OSEP-administered funding stream to aid federally funded advocacy groups in coordinating and making available self-advocacy training programs, resources, and services to students with disabilities and their parents throughout the state. Elements of the coordinated technical assistance systems should include the following:

- *The availability of a lawyer at every state PTI center, protection and advocacy agency, and independent living center able to provide competent legal advice to students with disabilities and their parents in advocating for their rights.*

- ***Self-advocacy training programs for students with disabilities and their parents focused on civil rights awareness, education and transition planning, and independent living in the community.***

- ***The establishment of a national backup center to make legal materials, training, and other supports available for attorneys working on IDEA cases and issues at the state level.***

- ***Expansion of involvement by the private bar and legal services organizations in providing legal advice to students with disabilities and their parents in advocating for their legal rights under IDEA.***

The key disability advocacy organizations at the state level (PTIs, P&As, and IL centers) need additional funding to effectively implement a joint collaborative strategy for increased outreach and education of the general public and state legislators, technical assistance and advocacy for transition planning and services, independent monitoring of state compliance with IDEA, and affordable legal assistance to parents advocating for their child with a disability. The goal of the collaborative strategy is to increase each state's compliance with FAPE, LRE, IEP, Transition, General Supervision, Procedural Safeguards, and Protection in Evaluation.

Part VIII summarizes the findings and recommendations of this report.

VIII. Summary and Conclusions

This report assessed the monitoring, compliance, and enforcement activities of the Federal Government related to the Individuals with Disabilities Education Act (IDEA). In the Department of Education (DoED), it considered the grant eligibility process, the state monitoring process up to the fall of 1998, and the federal complaint processes. Enforcement efforts were examined, as well as the role of the Department of Justice (DOJ). These activities were examined in terms of the outcomes they have produced and the compliance/enforcement authorities available under the law. Litigation challenging state monitoring systems was reviewed, as were the features of new state monitoring systems currently being developed as a result of litigation. Technical assistance/public information initiatives targeted to parents and families of children served by IDEA were highlighted. Views from IDEA stakeholders, including parents, advocates, and a state special education director, were offered.

The findings indicate that failure to ensure compliance with IDEA is widespread and persists over time. While noncompliance is regularly documented by the Department of Education, sanctions have rarely been used. Some authorities available for enforcement have not been utilized; others have been under-utilized. The very extensive state monitoring process used by DoED appeared to serve multiple purposes and be related more to program improvement than enforcing full compliance with the law. There was a lack of balance between these objectives, with continuing emphasis on program improvement, even in instances of persistent noncompliance. Parents expressed frustration and disappointment at the slow progress in the implementation of IDEA.

The recommendations in this report are intended to strengthen federal authority for enforcement, as well as federal systems for monitoring and ensuring compliance. They are intended to build upon what has been learned in 25 years of monitoring compliance and enforcement activity under IDEA, as well as what has been learned about effective enforcement mechanisms in our nation's other civil rights laws. Activities generated by the 1997 amendments to IDEA make this a unique opportunity to redesign some features of the monitoring/enforcement scheme to ensure that the new law produces the intended results for students with disabilities and their families.

ENDNOTES

1. NATIONAL COUNCIL ON DISABILITY, ACHIEVING INDEPENDENCE: A CHALLENGE FOR THE 21ST CENTURY 53 (1996).

2. Interview with Curtis Decker, Executive Director of National Association of Protection and Advocacy Systems (NAPAS), in Washington, DC (February 1999).

3. 20 U.S.C. §§ 1400 *et seq.* (1999), formerly known, in reverse chronological order, as Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773, as amended by Act of October 10, 1990; and Elementary and Secondary Education Act of 1965, Pub. L. 93-380, 88 Stat. 484, as amended by Act of November 29, 1975. Pub. L. 94-142 represented a culmination of trends toward increased federal involvement in the education of disabled children. A significant portion of the requirements set out in PL 94-142 had already been set forth in PL 93-380. The current IDEA regulations appear at 34 C.F.R.§§ 300 *et seq.* (1999).

4. 29 U.S.C. § 794 (a) (1973), as amended by Act of 1978. The Section 504 regulations concerning education can be found at 34 C.F.R. § 104 (1990).

5. 42 U.S.C. §§ 12101 *et seq.* (1990).

6. *See* 28 C.F.R pt. 35 Appendix A, preamble commentary on Part 35.102. Under Title II, public school systems "must provide program accessibility not only for children, but also for parents and guardians with disabilities, to programs, activities, or services, and appropriate auxiliary aids and services whenever necessary to ensure effective communication, as long as the provision of the auxiliary aids results neither in an undue burden nor in a fundamental alteration of the program."

7. Section 504 was originally introduced in 1971–72 as a bill to include disability in the Civil Rights Act of 1964. Because the legislative history of Section 504 parallels the history of IDEA, we include it here.

8. Disabled children have also been routinely exempted from state compulsory education laws. 1929 riz. Sess. Laws, ch. 93 p.21 (physical or mental condition that made attendance inexpedient or impracticable); 1921 Idaho Sess. Laws, ch. 215, p.71 (child's bodily or mental condition does not permit its attendance at school); Mich. Comp. Laws, p. 59798 (1915) (physically unable to attend).

9. *Brown v. Board of Education*, 347 U.S. 483 (1954).

10. *Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania*, 333 F. Supp. 1257 (E.D. Pennsylvania 1971), and *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

11. Letter from the Cameron School Parents Group to the State Commission on Special Education, June 24, 1981, reprinted in *Stepping Stones: Successful Advocacy for Children*, editor Sheryl Dicker, Foundation for Child Development, 1990, p. 113. Original article by Julie Landau, *The Richmond Case Study: Ending Segregated Education for Disabled Children.*

12. For example, the Office for Handicapped Individuals (1979) reported the following predictions for employment of disabled persons from 1979 to 1983: Only 525,000 (21%) will be fully employed or enrolled in college; 1,000,000 (40%) will be underemployed at poverty level; 200,000 (8%) will be in their home community and idle much of the time; 650,000 (26%) will be unemployed and on welfare; 75,000 (3%) will be totally dependent and institutionalized.

13. *Brown*, 347 U.S. at 495.

14. *Id.* at 493.

15. 20 U.S.C. § 1401(3)(A)-(B)(1999). The term "children with disabilities" is defined as a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who, by reason thereof, needs special education and related services. For children ages three through nine, the term "children with a disability" may, at the discretion of the state and local education agency, include a child experiencing development delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, who, by reason thereof, needs special education and related services.

16. 34 CFR § 300.2. (1999).

17. *Id.*

18. Pub. L. No. 94-182 itself was an amendment to the existing EHA law, Pub. L. No. 91-230, that established a state grant program for services for children with disabilities, but did not protect individual rights of children with disabilities to an education.

19. Handicapped Children's Protection Act, Pub. L. 99-372, August 5, 1986, Stat.796.

20. *Smith v. Robinson*, 468 U.S. 992 (1984). *See generally* Mary Lou Breslin, Disability Rights Education and Defense Fund, The Handicapped Children's Protection Act of 1986: Improving Educational Opportunities for Children with Disabilities (1997).

21. *See* 20 U.S.C. 1401(3)(A), (30) (1999) ("The term "transition services" means a coordinated set of activities for a student with a disability that—

(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based upon the individual student's needs, taking into account the student's preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocation evaluation.")

22. *See e.g.*, *Daniel R. R. v. State Board of Equalization, El Paso Independent School District*, 874 F.2d 1036 (5th Cir. 1989); *Green v. Rome City School District*, 950 F.2d 688 (11th Cir. 1991); *Oberti v. Board of Education*, 995 F.2d 1204 (3rd. Cir. 1993); *Board of Education, Sacramento City Unified School District v. Holland*, 14 F.3d 1398 (9th Cir. 1994), *cert. denied*, 512 U.S. 1207 (1994).

23. 20 U.S.C. § 1400(c).

24. 20 U.S.C. § 1400(c)(1), (4), and (5).

25. 20 U.S.C. § 1400(d)(1).

26. 20 U.S.C. § 1416 (b).

27. 20 U.S.C. § 1416 (a).

28. HOUSE COMM. ON EDUCATION AND THE WORKFORCE, INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997, H.R. Rep. No. 95, 105th Cong., 1st Sess. 339 (1997). *See also* SENATE COMM. ON LABOR AND HUMAN RESOURCES, INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997, S. Rep. No. 17, 105th Cong., 34 (1997).

29. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION SERVICES, MONITORING ACADEMY, CONTINUOUS IMPROVEMENT MONITORING PROCESS 1999–2000 MONITORING MANUAL, 52 (1999). (OSEP's 1999–2000 Monitoring Manual describes all the enforcement alternatives available under the revised monitoring process, but provides no description of the criteria that will trigger such actions, except as follows: "If serious noncompliance persists despite OSEP's efforts to work with the state to ensure effective correction, OSEP reviews the situation to determine whether formal enforcement action is necessary to ensure timely correction.").

30. 20 U.S.C. § 1402(a).

31. 20 U.S.C. §§ 1417(b).

32. 20 U.S.C. § 1411(a)(1).

33. 20 U.S.C. § 1412(a).

34. *Id.*

35. 20 U.S.C. § 1474 (a)(1)(A) (1999); *see also* General Education Provisions Act (GEPA), 20 U.S.C. § 1231(a)(3) (1999) requiring the Secretary to collect data and information for the purpose of obtaining objective measurements of the effectiveness of programs in achieving the programs' intended purposes.

36. 20 U.S.C. § 1416(a)(1), (emphasis added).

37. Of the 360 staff, 289 are in the Washington office and 71 are in the regions.

38. The total appropriation for all IDEA programs for FY '99 was $5,334,146,000. Of that amount, $4,100,700,000 is for the Part B state grant program. The preschool state grants are funded at $373,985,000 and the infants and families state grants are funded at $370,000,000. The remaining $279,461,000 is for discretionary programs authorized by Part D of IDEA.

39. Interview with Ruth Ryder and Lois Taylor, U.S. Department of Education, Washington DC, June 23, 1998.

40. Memorandum from Eileen Hanrahan, Office for Civil Rights to Ruth Ryder, Office of Special Education Programs, July 30, 1999.

41. Memorandum of Understanding Between the Office for Civil Rights and The Office of Special Education and Rehabilitative Services, Madeline Will and LeGree S. Daniels, July 29, 1987.

42. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.51.

43. Conversation with Eileen Hanrahan, Office for Civil Rights, Washington, DC, January 11, 1999.

44. Memorandum from Eileen Hanrahan to Ruth Ryder, July 30, 1999.

45. Memorandum from Ronald Petraka, U.S. Department of Education, Office of General Counsel, to Kathleen Blank, National Council on Disability, October 26, 1999.

46. 20 U.S.C.§ 1412(a)(11)(A).

47. 20 U.S.C. § 1412(a)(1)(A).

48. 20 U.S.C. § 1412(a)(5).

49. 20 U.S.C. § 1412(a)(6).

50. 20 U.S.C. § 1412(a)(18)(A).

51. 20 U.S.C. § 1412(a)(14).

52. 20 U.S.C. §§ 1412(a)(14), 1453(c)(3)(D)(vii).

53. *Id.*

54. 20 U.S.C. § 1412 (a)(16)-(17).

55. 20 U.S.C. § 1413(a).

56. 20 U.S.C. § 1413(a)(1).

57. *Id.*

58. 20 U.S.C. § 1413(d)(1).

59. 20 U.S.C. § 1413(h); 34 C.F.R. § 300.360-361. (1999).

60. 34 C.F.R. § 300.660-661. (1999).

61. The impact of a "cessation of services" policy on children with disabilities is that they can be left without any support or programming, resulting in loss of skills, lack of social contact, isolation, and potential involvement with crime, with devastating consequences to the children and their communities.

62. 20 U.S.C. § 1412(a)(1)(A).

63. Memorandum from National Association of Protection and Advocacy Systems, Washington, DC, pp.1-2 (on Ninth Edition of the Docket of P&A Special Education Cases).

64. *Id* at 3.

65. Conversation with Diana MTK Autin, Statewide Parent Advocacy Network, Newark, NJ, February 19, 1999.

66. Conversation with Mary Lou Breslin, Disability Rights Education and Defense Fund (DREDF), Berkeley, CA, February 23, 1999. (DREDF represented the Holland family in court.)

67. Quoted in Disability Rights Education and Defense Fund letter to "Friends of DREDF" from Margaret Jakobson, Disability Rights Education and Defense Fund Chair and President, 1994.

68. *The Washington Post*, "Student Tells Her Story of Schools' Failures," p.B9, February 19, 1999.

69. Conversation with Diana MTK Autin, Statewide Parent Advocacy Network, Newark, NJ, February 19, 1999.

70. Memorandum from National Association of Protection and Advocacy Systems, p.30 (on Ninth Edition of the Docket of P&A Special Education Cases).

71. Comment from participant in the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

72. Comment from participant in the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

73. Comment from participant in the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

74. Comment from participant in the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

75. Comment from participant in the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

76. National Parent Network on Disabilities, *Implementation, Monitoring and Compliance Program.*

77. Conversation with Linda Sheppard, Parents Educating Parents and Professionals, February 22, 1999.

78. Conversation with Diana MTK Autin, Statewide Parent Advocacy Network, Newark, NJ, February 19, 1999.

79. *See* National Council on Disability, Serving the Nation's Students with Disabilities: Progress and Prospects, (March 4, 1993); National Council on Disability, Meeting the Unique Needs of Minorities with Disabilities: A Report to the President and Congress, (April 26, 1993); and National Council on Disability, Inclusionary Education for Students with Disabilities: Keeping the Promise, (December 30, 1994). (Studies and testimony relating to disproportionate labeling and placement of minority children with disabilities in separate settings are cited and quoted throughout these reports)

80. Comment by parent participant at the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

81. Gemignani, R.J., U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Correctional Education: A Time for Change 2 (1994).

82. 20 U.S.C. § 1412.

83. 20 U.S.C. § 1416.

84. 20 U.S.C. § 1412(a).

85. 20 U.S.C. § 1412(a)(1)-(22).

86. 20 U.S.C. § 1412(c)(2)-(3).

87. Interview with Lois Taylor, Department of Education, Washington, DC, December 20, 1998.

88. 20 U.S.C. § 1412(d).

89. A total of 58 entities submit Part B plans to OSEP. These include the 50 states, the District of Columbia, the Bureau of Indian Affairs (on behalf of the American Indian lands), and US territories, including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands, Marshall Islands, Federated States of Micronesia, and the Republic of Palau.

90. 20 U.S.C. § 1451-1456.

91. 20 U.S.C. § 1454(b)(1).

92. 20 U.S.C. § 1453(b)(2)(C).

93. 20 U.S.C. § 1453(c)(3)(E).

94. 20 U.S.C. § 1413(d)(1).

95. Memorandum from Larry Ringer, Office of Special Education Programs to Kathleen Blank, National Council on Disability, August 23, 1999.

96. Memorandum from Thomas Hehir to Chief State School Officers, March 2, 1995 (regarding Monitoring Procedures of the Office of Special Education Programs).

97. Ryder and Taylor interview, June 23, 1998.

98. *Id.*

99. Memorandum from Thomas Hehir to Chief State School Officers, March 2, 1995 (regarding Monitoring Procedures of the Office of Special Education Programs).

100. Ryder and Taylor interview, June 23, 1998.

101. *Id.*

102. Ryder and Taylor interview, June 23, 1998.

103. Interview with Ruth Ryder and Lois Taylor, U.S. Department of Education, Washington, DC, July 24, 1998.

104. OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, U.S. DEPARTMENT OF EDUCATION, MONITORING ACADEMY (1997).

105. Memorandum from Thomas Hehir to Chief State School Officers March 2, 1995 (regarding Monitoring Procedures of the Office of Special Education Programs).

106. Memorandum from Thomas Hehir to Chief State School Officers March 2, 1995 (regarding Monitoring Procedures of the Office of Special Education Programs).

107. Ryder and Taylor interview, July 27, 1998.

108. Memorandum from Sonya Savkar to Jane West, p. 2, September 4, 1998.

109. NATIONAL COUNCIL ON DISABILITY, SERVING THE NATION'S STUDENTS WITH DISABILITIES: PROGRESS AND PROSPECTS, Washington, DC, March 4, 1993.

110. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p. 98.

111. *See* OFFICE OF SPECIAL EDUCATION PROGRAMS, U.S. DEPARTMENT OF EDUCATION, NORTH CAROLINA REPORT, September 29, 20 footnote 10 1995. "..during the 1991-92 school year when public agency C was monitored by NCDPI, NCDPI had no procedure for determining whether extended school year services were made available, as a necessary component of FAPE. When OSEP visited this agency in 1995, it identified continuing deficiencies with regard to this requirement. This is not included as a finding in this Report, because OSEP does not consider this single instance to demonstrate systemic noncompliance," (emphasis added).

112. *See* 20 U.S.C. § 1412 (a) (11) (A).

113. OFFICE OF SPECIAL EDUCATION PROGRAMS, UNITED STATES DEPARTMENT OF EDUCATION, TEXAS REPORT 5 (1997). (emphasis added)

114. *See id.*

115. U.S. Department of Education reviewer comment on the courtesy review draft of this study, Insert 1, received August 3, 1999.

116. The asterisk (*) in the General Supervision column for Mississippi indicates that the report appears to include sufficient data to support a finding of noncompliance in the area of state

monitoring of public agencies, yet the finding was not made. While the reports of several other states also raise this issue, only Mississippi's report does not contain findings of noncompliance in other areas under General Supervision. For a full discussion of this issue, see the State Monitoring section below.

117. U.S. Department of Education, Office of Special Education Programs, Alabama Report 2 (February 21, 1996).

118. U.S. Department of Education, Office of Special Education Programs, Iowa Report 18 (1995).

119. U.S. Department of Education, Office of Special Education Programs, Delaware Report 3 (1995).

120. U.S. Department of Education, Office of Special Education Programs, Connecticut Report 16 (1995).

121. U.S. Department of Education, Office of Special Education Programs, Arkansas Report 3 (1995).

122. U.S. Department of Education, Office of Special Education Programs, Florida Report (1997).

123. U.S. Department of Education, Office of Special Education Programs, Minnesota Report 17 (1994).

124. U.S. Department of Education, Office of Special Education Programs, Arizona Report 28 (1995).

125. U.S. Department of Education, Office of Special Education Programs, Oklahoma Report 10 (1997).

126. U.S. Department of Education, Office of Special Education Programs, California Report 22-23 (1996).

127. U.S. Department of Education, Office of Special Education Programs, Delaware Report 4 (1995).

128. U.S. Department of Education, Office of Special Education Programs, Arkansas Report 4 (1995).

129. U.S. Department of Education, Office of Special Education Programs, Pennsylvania Report 25 (1994).

130. U.S. Department of Education, Office of Special Education Programs, Connecticut Report 15 (1995).

131. U.S. Department of Education, Office of Special Education Programs, Kentucky Report 7 (1996).

132. U.S. Department of Education, Office of Special Education Programs, Ohio Report 7 (1995).

133. OSEP's unwillingness to make site visits to such facilities is apparently a longstanding issue. A former OSEP administrator responsible for federal monitoring until mid-1986 testified before a Congressional committee in 1988:

> ...since 1984, no state schools for students who are deaf or blind have been visited by an OSEP monitoring team as part of a normally scheduled monitoring review. The teams have been directed to not propose these agencies for monitoring. These schools represent the most segregated educational programming offered for the purpose of education. *In the face of a major LRE initiative, OSEP has chosen to not protect the rights of students who are deaf and blind to education with nonhandicapped students to the maximum extent appropriate.* (David J. Rostetter, *Testimony Before the Committee on Select Education*, pp.12-13, March 30, 1988) (emphasis in original).

134. U.S. Department of Education, Office of Special Education Programs, Kentucky Report 5 (1996).

135. U.S. Department of Education, Office of Special Education Programs, Iowa Report vii (1995) (emphasis added).

136. U.S. Department of Education, Office of Special Education Programs, Mississippi Report 3-4 (1997).

137. U.S. Department of Education, Office of Special Education Programs, Delaware Report 5 (1995).

138. U.S. Department of Education, Office of Special Education Programs, Idaho Report 12-13 (1995).

139. U.S. Department of Education, Office of Special Education Programs, Iowa Report 9 (1995).

140. U.S. Department of Education, Office of Special Education Programs, New York Report 41 (1994).

141. U.S. Department of Education, Office of Special Education Programs, South Carolina Report 6 (1995).

142. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, CALIFORNIA REPORT 16 (1996).

143. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, OHIO REPORT 21 (1995).

144. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, IOWA REPORT 10 (1995).

145. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, CONNECTICUT REPORT 34 (1995).

146. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, RHODE ISLAND REPORT 6 (1996). (footnote omitted.)

147. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW JERSEY REPORT 26 (1994).

148. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NORTH CAROLINA REPORT 10-11 (1995).

149. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, GEORGIA REPORT 13 (1996).

150. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW JERSEY REPORT 11-12 (1994).

151. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, KENTUCKY REPORT 14 (1996).

152. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, MASSACHUSETTS REPORT 17-18 (1995). (emphasis in original.)

153. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NORTH CAROLINA REPORT 4 (1995).

154. Comment by a student participant at the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, sponsored by the National Council on Disability, Washington, DC, September 22, 1999.

155. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW HAMPSHIRE REPORT 25 (1994).

156. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, MASSACHUSETTS REPORT 21 (1995).

157. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, MISSOURI REPORT 19 (1998).

158. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, COLORADO REPORT 8 (1996).

159. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW HAMPSHIRE REPORT 25 (1994).

160. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, CALIFORNIA REPORT 3-4 (1996).

161. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, MINNESOTA REPORT 27 (1994).

162. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, PENNSYLVANIA REPORT 8 (1994).

163. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, KANSAS REPORT 3 (1996).

164. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NORTH DAKOTA REPORT 5 (1994).

165. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ARIZONA REPORT 4 (1995). (footnote omitted.)

166. *Id.*

167. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, VIRGINIA REPORT 3-4 (1995). (footnote omitted.)

168. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, TEXAS REPORT 4 (1997).

169. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ILLINOIS REPORT 18-19 (1996). (footnote omitted.)

170. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, INDIANA REPORT 5 (1996).

171. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, LOUISIANA REPORT 1 (1995).

172. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, CALIFORNIA REPORT 10-11 (1996) (footnote omitted, emphasis in original).

173. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ALASKA REPORT 5 (1997) (emphasis added).

174. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ALABAMA REPORT 9-11 (1996).

175. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, MAINE REPORT 9 (1997).

176. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, SOUTH CAROLINA REPORT 1 (1995) (emphasis added).

177. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, TENNESSEE REPORT 8 (1996).

178. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ILLINOIS REPORT 3 (1996).

179. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, GEORGIA REPORT 6 (1996).

180. For the purposes of this review, protection in evaluation includes delays in initial evaluations, which are treated by U.S. Department of Education as Free Appropriate Public Education violations.

181. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, TEXAS REPORT 15 (1997).

182. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, RHODE ISLAND REPORT 11 (1996).

183. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, INDIANA REPORT 8–9 (1996).

184. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, NEW YORK REPORT 50–51 (1994).

185. The Government Performance and Results Act, 31 U.S.C. §1115 (1993).

186. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.98.

187. U.S. Department of Education, Office of Special Education Programs, West Virginia Report 2 (1997).

188. 34 CFR § 300.382 (1999).

189. 34 CFR §§ 300.550(a) (1999) (current to March 12, 1999); 300.552(c) (1999) (current to March 12, 1999).

190. U.S. Department of Education, Office of Special Education Programs, North Dakota Report 10–11 (1994).

191. U.S. Department of Education, Office of Special Education Programs, Utah Report 19–20 (1994).

192. David J. Rostetter, *Testimony Before the Committee on Select Education*, pp.13–14, March 30, 1988.

193. U.S. Department of Education, Office of Special Education Programs, Ohio Report cover letter 1 (1995).

194. U.S. Department of Education, Office of Special Education Programs, North Carolina Report cover letter 2 (1995).

195. U.S. Department of Education, Office of Special Education Programs, New York Report cover letter 1–2 (1994) (emphasis in original).

196. U.S. Department of Education, Office of Special Education Programs, New Mexico Report cover letter 1 (1995) (emphasis in original).

197. U.S. Department of Education, Office of Special Education Programs, Minnesota Report cover letter 2 (1994).

198. U.S. Department of Education, Office of Special Education Programs, Massachusetts Report cover letter 2–3 (1995).

199. U.S. Department of Education, Office of Special Education Programs, Maine Report 12 (1997).

200. U.S. Department of Education, Office of Special Education Programs, Kentucky Report 5 (1996).

201. U.S. Department of Education, Office of Special Education Programs, Illinois Report 1–2 (1996).

202. U.S. Department of Education, Office of Special Education Programs, Florida Report cover letter 2 (1997).

203. U.S. Department of Education, Office of Special Education Programs, Connecticut Report cover letter 2 (1995).

204. U.S. DEPARTMENT OF EDUCATION, OFFICE OF SPECIAL EDUCATION PROGRAMS, ALASKA REPORT cover letter 2, (1997).

205. Memorandum from Jane West to Lois Taylor, June 16, 1998.

206. Memorandum from Sonya Savkar to Jane West, p.2, September 4, 1998.

207. A "follow-up" report was also available as an additional source of information for the state of New York.

208. U.S. Department of Education, *Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, p.A-1, 1997.

209. David J. Rostetter, *Testimony Before the Committee on Select Education*, p.15, March 30, 1988 (emphasis in original).

210. In addition to the other limitations discussed, U.S. Department of Education apparently monitored New York in 1987 but could not produce a copy of the report for this study.

211. Memorandum from Larry Ringer to Kathleen Blank, August 23, 1999.

212. *Id.*

213. Memorandum from Eileen Hanrahan to Ruth Ryder, July 30, 1999.

214. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.10.

215. Memorandum from Eileen Hanrahan to Ruth Ryder, July 30, 1999.

216. *Id.*

217. National Association of State Directors of Special Education, *NASDSE's Vision for Balanced Accountability*, p.2, 1995.

218. *Id.*

219. Interview with Martha Fields, National Association of State Directors of Special Education, Alexandria, VA, March 8, 1998.

220. Ryder and Taylor interview, July 24, 1998.

221. Memorandum from U.S. Department of Education to Jane West, September 1998.

222. U.S. Department of Education, Office of the Inspector General *Audit Report ACN: 11-50201, Office of Special Education and Rehabilitative Services Secretarial Review Process in*

Need of Change, August, 1997.

223. *Compare* 34 C.F.R. § 300.661, (September 29, 1992) to current regulations 34 C.F.R. § 300.661 (March 12, 1999).

224. 62 Fed. Reg. 55,026, 55,050 (1997) (to be codified at 34 C.F.R. § 300.661).

225. U. S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.142.

226. 64 Fed. Reg. 12,406, 12,667 (1999) (to be codified at §§ 300.661(c), 303.512(c)).

227. C.F.R. § 300.504(b)(14) (March 12, 1999).

228. U.S. Department of Education, Office of the Inspector General *Audit Report ACN: 11-50201, Office of Special Education and Rehabilitative Services Secretarial Review Process in Need of Change*, August, 1997.

229. 20 U.S.C. §1418(a)(2).

230. *See* 34 C.F.R. § 80.12

231. *See* 20 U.S.C. 1234(c)(3).

232. Interview with Ruth Ryder and Lois Taylor, Office of Special Education Programs, Washington, DC, July 27, 1998.

233. U.S. Department of Education, Office of Special Education Programs, *Summary of Past Enforcement Actions by the Department of Education under the Individuals with Disabilities Education Act*, September 1998, and U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.60.

234. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.60.

235. U.S. Department of Education, Office of Special Education Programs also added special conditions to the Part C award for the state of Illinois for FY '96 and FY '97 for failure to ensure service to all eligible infants and toddlers and their families. This action is not included in the table as it is not a Part B determination.

236. *See supra*, note 232.

237. *Id.*

238. "Special Ed Woes Persist in the District," *Washington Post*, March 15, 1999, at p.B1, B6.

239. 20 U.S.C. § 1416 (a)(1)(A).

240. 20 U.S.C. § 1416.

241. 20 U.S.C. § 1416 (a)(1)(B).

242. 20 U.S.C. § 1412 (a)(1)(A).

243. *See* 20 U.S.C. 1234c(a)(2).

244. Description of this process adapted from the U.S. Department of Education, Office of Special Education Programs, *Continuous Improvement Monitoring Process, 1999-2000 Monitoring Manual*, May, 1999, p.54.

245. Letter to Secretary Riley from Governor Allen, February 18, 1994. (Letter in Appendix D).

246. Letter to Secretary Riley from Senator Warner, Representative Bliley, Senator Robb, Representative Bateman, Representative Boucher, Representative Byrne, Representative Goodlatte, Representative Moran, Representative Payne, Representative Pickett, Representative Scott, Representative Sisisky, and Representative Wolf, April 15, 1994 (letter in Appendix D).

247. Third Annual Report to Congress on the Implementation of Public Law 94-142: The Education for all Handicapped Children Act, p.v., referencing section 618(f)(1) of EHA-B. IDEA has since been amended again, and the revised mandate requires that "The Secretary shall periodically report to the Congress on the Secretary's activities under this subsection." Section 661(a)(5). Subsection 661(a) directs the Secretary to develop a comprehensive plan to enhance services and provide funding for education of children with disabilities.

Whether the alterations made to state plans in order to receive funding were effectively carried out then becomes part of the compliance monitoring process; however, in none of the reports are connections drawn between those states whose plans required correction and states later found to be noncompliant.

248. U.S. Department of Education, Annual Report, v (1986).

249. U.S. Department of Education, Annual Report, 112 (1990).

250. U.S. Department of Education, Annual Report (1979); U.S. Department of Education, Annual Report (1980).

251. U.S. Department of Education, Annual Report (1981); U.S. Department of Education, Annual Report (1982); U.S. Department of Education, Annual Report (1983).

252. U.S. Department of Education, Annual Report, 31 (1983).

253. U.S. Department of Education, Annual Report (1984); U.S. Department of Education, Annual Report (1985); U.S. Department of Education, Annual Report (1986); U.S. Department of Education, Annual Report (1987); U.S. Department of Education, Annual Report (1988); Department of Education, Annual Report (1989).

254. U.S. Department of Education, Annual Report, 97 (1986).

255. U.S. Department of Education, Annual Report, 112 (1990).

256. U.S. Department of Education, Annual Report, 72–73 (1979).

257. U.S. Department of Education, Annual Report, 70, 100–101 (1980).

258. *Id.* at 102–103.

259. *Id.* at 101.

260. *Id.* at 103.

261. U.S. Department of Education, Annual Report, 101 (1981).

262. U.S. Department of Education, Annual Report, 69 (1982).

263. *Id.* at 73.

264. U.S. Department of Education, Annual Report, 98 (1985).

265. U.S. Department of Education, Annual Report, 104 (1986).

266. U.S. Department of Education, Annual Report, 112 (1990).

267. *Id.* at 113.

268. *Id.*

269. U.S. Department of Education, Annual Report, 45 (1997).

270. U.S. Department of Education, Annual Report, 100 (1980).

271. U.S. Department of Education, Annual Report, 101 (1981).

272. U.S. Department of Education, Annual Report, 108 (1986).

273. U.S. Department of Education, Annual Report, 113 (1990).

274. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1979); U. S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1980); U. S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1981).

275. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1984); U.S. DEPARTMENT OF EDUCATION ANNUAL REPORT (1985); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1986); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1987); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1988); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1989); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1994); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1995); U.S. DEPARTMENT OF EDUCATION ANNUAL REPORT (1997).

276. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1984); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1985); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1987); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1992); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1993); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1994); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1995).

277. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT (1996).

278. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 99 (1981).

279. *Id.* at 102.

280. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 69 (1982).

281. *Id.* at 69-70.

282. *Id.* at 70.

283. *Id.* at 73.

284. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 32–33 (1983).

285. *Id.* at 108.

286. *See supra,* note 41, at 63.

287. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 184–184 (1989).

288. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 132 (1990).

289. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 105 (1986); U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 154 (1989).

290. U.S. DEPARTMENT OF EDUCATION, ANNUAL REPORT, 116 (1990).

291. U.S. Department of Education, Annual Report, 105 (1986).

292. U.S. Department of Education, Annual Report, 114 (1990).

293. *Id.* at 124.

294. U.S. Department of Education, Annual Report (1979); U.S. Department of Education, Annual Report (1980).

295. U.S. Department of Education, Annual Report, 69 (1982).

296. *Id.*

297. *Id.*

298. *Id.* at 71.

299. U.S. Department of Education, Annual Report, 31 (1983).

300. *Id.* at 32.

301. U.S. Department of Education, Annual Report, 111 (1990).

302. U.S. Department of Education, Annual Report, 197 (1983).

303. *Id.*

304. U.S. Department of Education, Annual Report, 97 (1981).

305. U.S. Department of Education, Annual Report, 69 (1982).

306. U.S. Department of Education, Annual Report, 32 (1983).

307. Curtis Decker, Executive Director, National Association of Protection and Advocacy Systems (NAPAS) at the Town Meeting on Federal Enforcement of the Individuals with Disabilities Education Act, Washington, DC, September 22, 1999.

308. *Sacramento City Unified School District v. Holland* 14 F.3d 1398, (1994) *cert. denied*, 512 U.S. 1207 (1994); *Emma C. v. Eastin*, 985 F. Supp. 940 (1997); *Corey H. v. Board of Education of City of Chicago*, 995 F. Supp. 900 (N.D. Ill 1998).

309. *Id.* at 902.

310. *Id.* at 903.

311. *Id.* at 912.

312. *Id.* at 904, 915.

313. *Id.* at 904.

314. *Id.* at 914.

315. *Id.*

316. *Id.* at 908–911.

317. The hearing was postponed to December 1999.

318. *Eastin*, 985 F. Supp. 940.

319. *Id.* at 945.

320. Texas Compliance Monitoring System, *A Proposal For Change* (1998) (supported by Advocacy Inc., Texas).

321. Members of the Chicago Group include David J. Rostetter, W. Alan Coulter, William R. Sharpton, Mark A. Mlawer, and Brian McNultey.

322. *Id.* at p.3.

323. *Id.*

324. *Id.* at p.10.

325. Texas Compliance Monitoring System, *A Proposal For Change* 10–14 (1998).

326. *Id.* at p.13–14.

327. *Id.* at p.18–20.

328. Interviews with Mark Gross, Appellate Division of Department of the U.S. Department of Justice, Washington, DC, January 4, 1999; and Robert Kopp, Civil Division of Department of the U.S. Department of Justice, Washington, DC, January 7, 1999.

329. Memorandum from Elizabeth Savage to Andrew Imparato, August 10, 1999.

330. Interview with Mark Gross, Appellate Division of Department of the U.S. Department of Justice, Washington, DC, January 4, 1999.

331. *See, e.g., Alexander v. Flora Brooks Boyd*, C.A. No. 3:99-3062-17 (D.S.C.) and *Magyar v. Tucson Unified School District*, No. CV-46-998 (D.Ariz).

332. 20 U.S.C. 1485(a).

333. Memorandum from Larry Ringer to Kathleen Blank, August 23, 1999.

334. 20 U.S.C. 1482(b).

335. Memorandum from Eileen Hanrahan to Ruth Ryder, July 30, 1999.

336. *Id.*

337. Interview with Curtis Decker, Executive Director, National Association of Protection and Advocacy Systems (NAPAS), February 1999.

Appendix A

List of Interviews for This Study

1. Jane West interview with Diane Lipton of the Disability Rights Education Defense Fund, 2/12/98
2. Jane West interview with Steve Aleman and Nancy Jones of the Congressional Research Service, Library of Congress, 3/25/98
3. Jane West interview with Tom Hehir, JoLeta Reynolds, Ruth Ryder of the Office of Special Education Programs (OSEP), U.S. Department of Education, 4/8/98
4. Jane West interview with Martha Fields, National Association of State Directors of Special Education, 4/8/98
5. Jane West and Nancy Mudrick interview with Rebecca Fitch, Office for Civil Rights, U.S. Department of Education, 5/14/98
6. Jane West meeting with Consortium for Citizens with Disabilities Task Force on Civil Rights, 5/20/98
7. Jane West and Nancy Mudrick interview with Eileen Hanrahan, Office for Civil Rights, U.S. Department of Education, 5/28/98
8. Jane West and Nancy Mudrick interview with Elinor Baker and Ting Ting Elinore, Office for Civil Rights, U.S. Department of Education, 5/28/98
9. Jane West interview with Patty McGill-Smith, National Parent Network, 6/10/98
10. Jane West and Jillian Cutler interview with Ruth Ryder and Lois Taylor, Office of Special Education Programs, U.S. Department of Education, 6/23/98
11. Jane West interview with Diane Lipton, Disability Rights Education and Defense Fund, 7/1/98
12. Jane West and Jillian Cutler interview with Ruth Ryder and Lois Taylor, Office of Special Education Programs, U.S. Department of Education, 7/25/98
13. Jane West and Jillian Cutler interview with Ruth Ryder and Lois Taylor, U.S. Department of Education, 7/27/98
14. Jane West telephone interview with Suzanne Sheridan, Office of General Counsel (OGC), U.S. Department of Education, 12/9/98
15. Jane West telephone interview with Mark Gross, Appellate Section of Civil Rights Division, U.S. Department of Justice, 1/4/99
16. Jane West telephone interview with Robert Kopp, Civil Division, U.S. Department of Justice, 1/7/99
17. Jillian Cutter interviews with fourteen parents from California, Florida, Illinois, New Mexico, New York, North Carolina, Pennsylvania, Texas, and Vermont, 8/4–8/11/1998
18. Mary Lou Breslin telephone interview with Curtis Decker, National Association of Protection and Advocacy Systems (NAPAS), 1/21/99
19. Kathleen Blank telephone interview with JoLeta Reynolds, OSEP, 7/99
20. Kathleen Blank telephone interview with Larry Ringer, OSEP, 8/19/99
21. Kathleen Blank interview with Ruth Ryder and Larry Ringer, OSEP, 8/24/99
22. Kathleen Blank telephone interview with Suzanne Sheridan, OGC, 9/99
23. Kathleen Blank telephone interview with Ronald Petracca, OGC, U.S. Department of Education, 10/26/99
24. Kathleen Blank telephone interview with JoLeta Reynolds, OSEP, 10/28/99

Appendix B

Educational Inequity and Children With Disabilities: Ten Problem Areas IDEA Was Intended to Address[1]

Through the Individuals with Disabilities Education Act (IDEA), Congress attempted to remedy the most egregious problems facing children with disabilities in the education system. Although IDEA has improved the system considerably, problems in all of these areas persist today. The following are 10 problem areas facing children with disabilities in accessing public education that Congress intended to address in enacting IDEA in 1975: (1) exclusion, (2) special needs, (3) disciplinary exclusion, (4) evaluation, (5) lack of educational goals, (6) placement/segregation, (7) related services, (8) parental involvement, (9) access to records, and (10) due process.

(1) Exclusion

Prior to the early 1970s, state education laws frequently excluded entire categories of children with disabilities. Under IDEA and Section 504 of the Rehabilitation Act, a free appropriate public education must be made available to *all* eligible children with disabilities.

(2) Special Needs

Historically, society has failed to recognize the special needs of children with disabilities. School districts frequently have failed to identify these children, and even when they were identified as needing special assistance, they were frequently shuffled from one agency to another. Not surprisingly, many of them "fell through the cracks." Today, special education legislation requires that school districts seek out and identify children with disabilities and coordinate and make FAPE available to them.

(3) Disciplinary Exclusion

Even when a school district recognized that a child had special needs, the child would sometimes break school rules or, because of the child's disability, be unable to conform his or her behavior to school rules and then be excluded from the educational program on that basis. Schools would then suspend, transfer, expel, or otherwise prevent the child's attendance.

(4) Evaluation

In the past, placement in special classes was often based on the results of a single evaluation instrument, such as the "IQ" test. Several years ago parents challenged a state superintendent of schools for placing a disproportionate number of African-American children in "educable mentally retarded" classes due to a culturally biased testing process.[2] Congress addressed the evaluation problem by requiring nondiscriminatory assessment procedures.

(5) Educational Goals

Traditionally, special education focused on placement; thus, educators largely ignored the need to develop individualized instruction and monitor goals for individual children. Congress therefore established the Individualized Education Program (IEP) as the means through which schools develop educational plans and goals and monitor progress of individual children.

(6) Placement/Segregation

Placement in special education historically meant placement in segregated programs or institutions. Segregation, coupled with the absence of goal orientation, created a crisis in the quality of special education. This spurred Congress to mandate the concept of placement in the least restrictive environment (LRE), which pervades IDEA.

(7) Related Services

Historically, many children needed related services outside the educational system's previously conceived areas of responsibility; among them were occupational therapy, physical therapy, family counseling, and so forth. Many people viewed these services as peripheral to the goals of public education. To guarantee the children's rights, Congress declared related services to be *essential* if a child needs them to benefit from special education.

(8) Parental Involvement

Traditionally, parents were denied a role in the special education process. In contrast, IDEA considers parental involvement essential and affords parents a primary role in decision making. IDEA requires school officials to notify parents whenever the school proposes any change to the child's identification, evaluation, placement, or provision of FAPE, as well as to obtain their consent and involve them in the development and review of their child's IEP. They must notify parents and obtain their consent when making an evaluation or reevaluation for the initial provision of special education. School officials must also notify parents when refusing a change to their child's identification, evaluation, placement, or provision of FAPE.

(9) Access to Records

Schools also frequently denied parent requests for access to their child's records if they wished to question a placement or other education-related decision. Under IDEA, parents may "inspect and review," and may obtain copies of any educational records, if not having copies of those records will impede the exercise of their right to "inspect and review."

(10) Due Process

Even with access to records, parents who wished to challenge school actions were often hampered by a lack of procedural safeguards. IDEA solves this problem by establishing a specific system for achieving due process.

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1. Unless otherwise indicated, the information in this section comes from Arlene Mayerson, *The Educational Process,* Disability Rights Education and Defense Fund, 1990.

2. *Larry P. v. Riles*, 793 F.2d 969 (1984).

Appendix C

Basic Requirements of IDEA

The basic requirements of the Individuals with Disabilities Act (IDEA) outlined in this appendix are (1) free appropriate public education (FAPE), (2) least restrictive environment (LRE), (3) parent and student rights, (4) child-find, (5) evaluation procedures, (6) individualized education program (IEP), and (7) procedural safeguards.

1. Free Appropriate Public Education

IDEA defines a free appropriate public education as special education and related services provided at public expense that meet the standards of the state education agency (SEA). It includes appropriate pre-, elementary, and secondary school education in the state involved and must be provided in accordance with the IEPs.[1] In other words, FAPE for an individual student is defined by the student's IEP. Because of this student-specific approach, "provision of a FAPE to children with disabilities is a potent requirement of IDEA,"[2] and represents a revolutionary advance in education, the notion of tailoring education to fit individual student needs.

In providing FAPE to children with disabilities, schools cannot simply provide one type of educational program. Children with disabilities must be afforded "the same variety of educational programs and services...as other children, including art, music, industrial arts, consumer and homemaking education, and vocational education."[3]

Schools are required to make FAPE available to every child who qualifies under the statute. IDEA '97 added an explicit provision requiring FAPE even for children with disabilities who have been suspended or expelled.[4] States are obliged to make FAPE available to all children with disabilities through age 21, unless its application to those children would be inconsistent with state law or practice, or the order of any court, respecting the provision of public education. States are not obliged to make FAPE available to children ages 18–21 incarcerated in state correctional facilities, where state law does not require that special education and related services under IDEA be provided if the child was not actually identified as a child with a disability or did not have an IEP in his or her educational placement before incarceration in an adult correctional facility.[5]

Free Education

IDEA requires that all aspects of the educational program, including related services, be provided without cost to parents or guardians. School districts are not necessarily required to pay for everything; some services may be funded by other agencies.

Free education sometimes extends to private schools as well. When a placement decision calls for attendance at a private school (the school district places the child in a private school), the student must be provided with special education and related services in conformance with the IEP at no cost to the parents. Moreover, the child is to be afforded all the rights guaranteed under IDEA, and the child must be provided an education that meets the standards that apply to education provided by state and local education agencies (LEAs).[6] The SEA is responsible for monitoring compliance with these requirements, for disseminating standards to these schools, and for involving them in the development of state standards.[7] Children placed by their parents in private schools have no right to FAPE if the public agency has made FAPE available.[8]

Special Education

Special education is defined as specially designed instruction at no cost to parents to meet the unique needs of a child with a disability.[9] As IDEA '97 emphasizes, special education does not refer to a place or a particular classroom, school, or other setting. Once instruction has been individualized to address a particular child's needs, it can be provided in a variety of settings appropriate for the child, including the regular education classroom. Thus, it would be illegal for a school district to provide "special education" by automatically placing a child with a disability in a particular class based on a disability label.

Related Services

Related services are often crucial for creating "program accessibility" in public school for children with disabilities. The law defines related services as follows:

> "transportation and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social

> work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children."[10]

Comparable Benefits and Services

Section 504 of the Rehabilitation Act also requires school systems to provide students with disabilities with benefits and services comparable to those provided to nondisabled students. The requirement flows from regulations prohibiting discriminatory practices. Children with disabilities must be afforded an opportunity to participate in or benefit from an aid, benefit, or service that is equal to that afforded others or be provided an aid, benefit, or service that is as effective as that provided to others.[11]

2. Least Restrictive Environment

IDEA mandates that children with disabilities be provided with special education and related services in the least restrictive environment appropriate for the individual child with a disability; that is, the environment that provides for maximum interaction with nondisabled children consistent with the child's needs. This key substantive right is perhaps *the* linchpin of IDEA and of the other disability civil rights laws, sometimes referred to as the "integration mandate." The statute compels states and schools systems to ensure

> "that to the maximum extent appropriate, children with disabilities, including those children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[12]

Every step away from the regular education classroom must be justified by a compelling educational justification in light of the law's strong preference for educating children with disabilities in the regular education classroom.

In addition, school districts must place children with disabilities in the same schools they would have attended if not disabled unless a student's IEP requires some other arrangement.[13] Schools must also provide nonacademic and extracurricular services and activities that comply with the LRE requirements. Meals, recess, athletics, transportation, counseling services, health services, recreation activities, special interest groups or clubs, and employment and employment-related assistance all fall into this category.[14] Agencies must ensure that each child with a disability participates with other children in these services and activities "to the maximum extent appropriate to the [child's] needs."[15]

The integration mandate embodies Congressional judgment that educating children with disabilities with children without disabilities is fundamental to providing equal educational opportunity and to the goals of the Act. If children with disabilities are to lead independent lives fully integrated in the community, children with and without disabilities must come to know each other in the schools, our primary socializing institution. Learning, by all children, occurs in significant part from other children and from modeling from each other.[16] Further, separate schooling for children with disabilities has historically often resulted in inequities in resources, watered-down curricula, low expectations, and substandard education. The LRE requirement is intended to reverse these practices.

The IDEA implementing regulations call for the availability of a continuum of placement options ranging from instruction in regular classes, resource room instruction, and itinerant instruction to residential placement in a private school. The decision regarding which setting is suitable for a particular child is to be made on an individual basis.

Placement decisions must be made annually and on an individual basis (i.e., must be based on an IEP)—focusing on the child's educational needs rather than administrative convenience.[17]

Children in institutions—both public and private—are also protected by the LRE mandate.[18] Each state educational agency is responsible for making appropriate arrangements with public and private institutions (e.g., a memorandum of agreement or special implementation procedures) to ensure that this requirement is fulfilled.[19]

Staff Preparation

The SEA must ensure that staff at local schools receive the necessary training and technical assistance to fulfill LRE requirements.[20] The SEA is also responsible for monitoring and assisting local school districts to ensure compliance with LRE.[21]

The Act's requirement that the state establish a Comprehensive System of Personnel Development is intended to ensure that personnel are adequately trained in "preferred practices" and that the state adopts and disseminates information about such practices to teachers and school systems. The requirement is crucial to ensuring general and special education teachers understand and appropriately implement the LRE and general curriculum requirements in the law.

3. Parent and Student Rights

Another of IDEA's central and unprecedented requirements is the key role given to parents of children with disabilities. IDEA was the first special education statute to carve out a central role for parents. [22] The law makes them part of the education team that develops, reviews, and revises the IEP. Numerous provisions in the regulations calling for parent participation detail the responsibilities of the school system to include parents in this crucial IEP process.[23] IDEA also gives parents substantial control including the right to dispute agency practices and decisions. Parents can appeal such decisions through formal due process hearings, in which an impartial administrative hearing officer listens to both sides and issues a final decision.[24] Either the parent or the school district can appeal a hearing decision to state or federal court.

4. Child Find

The "child-find" provisions require agencies to identify, locate, and evaluate all children with disabilities from birth to age 21 in their jurisdiction. The policies and procedures on file to establish state eligibility must include a child-find procedure to ensure the following:

> (1) All children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the

severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.[25]

Clearly, Congress intended schools to aggressively undertake this task. The burden of responsibility is on the schools, not the parents, to identify eligible children.

5. Evaluation

The abuses of special education programs, as well as their successes, are inextricably bound to the evaluation process. An evaluation is a procedure for discerning the nature and severity of a child's disability and his or her educational needs. Placement of a disproportionate number of minority students in classes for educable mentally retarded children based on discriminatory evaluation procedures is one example of an abusive process. Culturally biased testing or reliance on a single instrument or opinion can lead to this situation. On the other hand, many children are never assessed, or are assessed too late; other children are misclassified or receive inadequate evaluations (e.g., important aspects of the child's behavior, performance, or health are not diagnosed). In these instances, the child is denied essential educational services. Those children who receive a thorough and appropriate evaluation are more likely to receive services tailored to their needs. A good evaluation forms the cornerstone of a free appropriate public education.

IDEA and its regulations recognize that fair evaluation procedures, which culminate in comprehensive and accurate assessments of children with disabilities, are necessary in order to maximize the benefits of special education and related services. IDEA requires agencies to conduct a full and individual evaluation of a child's needs before the initial provision of special education and related services to a child with a disability.[26] This initial evaluation requirement is significant because it was intended to halt the arbitrary placement practices that had pervaded special education.

The statute sets forth several specific provisions that educational agencies must follow in evaluating children with disabilities. Agencies are prohibited from using testing and evaluation materials and procedures that are culturally or racially discriminatory.[27] Agencies must provide and administer all tests and evaluation materials in the child's native language or primary mode of communication if at all feasible.[28] Evaluation materials must include those tailored to assess specific educational areas; a simple "IQ" test is inadequate.[29] When evaluating children with impaired sensory, manual, or speaking skills, materials must be selected and administered to ensure that the impairment itself will not distort or skew test results.[30] An assessment cannot rely on just one single criterion for determining a child's educational needs.[31] Evaluations must be conducted by a multidisciplinary group including at least one teacher or specialist knowledgeable about the suspected disability.[32]

Finally, each child with a disability or suspected of having a disability must be evaluated in all areas of the suspected disability. This may include health, vision, hearing, social, and emotional status, academic performance, and motor and communication abilities.[33]

Independent Evaluation

If parents disagree with the public agency's evaluation, they have a right to an independent educational evaluation at public expense.[34] If an agency-initiated hearing finds that the original evaluation was satisfactory, parents can still obtain an independent evaluation if they pay for it. If an independent evaluation is made at private expense, the results must be considered in any decision by the IEP team regarding provision of a free appropriate public education to the child.[35]

Re-evaluation

Recognizing that a person's needs and physical condition can change, the regulations specifically require that each child be re-evaluated at least once or more often every three years, if conditions warrant or if the parent or teacher requests it. If the parent or teacher requests it, the re-evaluation may be more frequent.[36] This provision protects children from becoming "forgotten" after initial placement in a special education program. It ensures that a child's changing educational needs are identified and that appropriate instructional strategies and interventions are utilized.

6. Individualized Education Program

The centerpiece of the IDEA, the individualized education program, is the central building block that parents use to ensure that an appropriate program is developed that meets their child's unique educational needs.

Under IDEA, public agencies, as well as private schools where children with disabilities are placed by school districts, must develop and implement an IEP for each of these students.[37] Public agencies must conduct meetings on at least an annual basis in order to develop, revise, or review each child's IEP.[38] The public agency must also ensure that an IEP team for each child includes

(1) the parents of the child,

(2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment),

(3) at least one special education teacher of the child or, if appropriate, at least one special education provider of the child,

(4) a representative of the public agency who

  (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities,

  (ii) is knowledgeable about the general curriculum, and

  (iii) is knowledgeable about the availability of resources of the public agency;

(5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6) of this section,

(6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, and

(7) if appropriate, the child[39]

The IEP is a written statement that must be in effect before special education and related services are provided to a child. After it is developed or reviewed, it must be implemented without undue delay. It must be developed, reviewed, and revised during meetings that include a representative of the school or agency who is qualified to provide or supervise the provision of special education; the child's special education teacher; the child's parents; the child, if appropriate; an individual who can interpret the instructional implications of evaluation results; and other individuals at the request of the parent or agency.

Contents of IEP

Each IEP must contain specific information regarding the child's educational needs. It must include the following:

a. A statement of present levels of performance including
    i. how the child's disability affects involvement and progress in the general curriculum, and
    ii. how, for preschoolers, the disability affects participation in appropriate activities.
b. A statement of measurable annual goals, including benchmarks or short-term objectives, related to
    i. meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and
    ii. meeting each of the child's other educational needs that result from the child's disability.
c. A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, *and* a statement of the program modifications or supports for school personnel that will be provided for the child to
    i. advance appropriately toward attaining the annual goals,
    ii. be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities, and
    iii. be educated and participate with nondisabled children in the general curriculum and in extracurriculum and other nonacademic activities.

d. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class, in the general curriculum, and in other activities (extracurricular and other nonacademic activities).

e. A statement of any individual modifications needed for the student to participate in state- and districtwide assessments, or, if the IEP team determines that the child will not participate in such assessments, a statement of why such assessments are not appropriate and how the child will be assessed.

f. The projected date for the beginning of services and modifications and frequency, location, and duration of services and modifications.

g. Beginning at age 14, a statement of the child's transition service needs focusing on the child's course of study (such as participation in advanced-placement courses or vocational education programs).

h. A statement of how the child's progress toward the annual goals will be measured and how parents will be regularly informed (by such means as report cards), at least as often as parents of nondisabled children are informed of their nondisabled children's progress toward goals and the extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.

The references to the general education curriculum were added to the IEP requirements by IDEA '97. The LRE statements regarding any nonparticipation with children without disabilities were also strengthened in the reauthorization. IDEA '97 added some specific considerations for the IEP team regarding behavior needs, language needs of children with limited English proficiency, media needs for children who need instruction in Braille, communication needs for children who are deaf or hard of hearing, and assistive technology needs. The requirement that a child's IEP include a statement regarding the child's participation in state- and districtwide assessments reflects a new accountability requirement in the law. It is now expected that nearly all children with disabilities will participate in such assessments and districts will be held as accountable for their progress as they are for nondisabled children.

7. Procedural Safeguards

IDEA requires public agencies to establish and implement a system of procedural safeguards including the following:

- A right to the opportunity to examine records.[40]

  Parents have the right to examine all records pertaining to the identification, evaluation, or placement of a child, or to the provision of a free and appropriate education.
- A right to obtain independent educational evaluations and be assured protection in evaluation procedures.
- A right to prior notice.

  Schools cannot propose or refuse to identify, evaluate, or place a child, or provide a free appropriate public education to a child with or suspected of having a disability, without first notifying the parents in writing. This notice must be sent a reasonable time in advance of the proposed action. It must describe the school's proposal (e.g., change in placement), other options considered but discarded, or any test, evaluation procedure, record, or report used by the school as a basis for its proposal. It must be written in language "understood by the general public," and, if necessary, translated into the parents' native language (if officials know that the parents do not read, the notice must be read or otherwise communicated to them so that they understand what it means).
- A right to parental consent.[41]

  Schools must obtain parental consent before conducting any evaluation or initial provision of special education and related services. If parents do not consent, the agency can use the due process hearing procedure to obtain a decision to proceed with the evaluation or placement regardless of parental consent. Parents must be notified about their rights, the school's actions, and the outcome of the hearing, and their right to appeal.
- A right to an impartial due process hearing.[42]

  When parents disagree with the school on the identification, evaluation, placement, or their child's service needs, they can request a due process fair hearing before a neutral hearing officer.[43] The district or agency responsible for the child's education conducts and pays for the hearing. Further, the school is obligated to tell parents about free and low-cost legal or other relevant services such as expert witnesses. If a parent wins a hearing or subsequent appeal in court, a court may award attorney fees incurred in litigating the matter to the parents.

- A right to administrative appeal and civil action in state or federal court.
- A right to the provision of surrogate parents.
- A right to confidentiality.

1. 20 U.S.C. § 1400(d)(1)(A), 1401(8)(D)(1997).

2. Susanne Lea, *The Heart of the Educational Process,* Disability Rights Education and Defense Fund, 1980.

3. 34 C.F.R. § 300.305.

4. 34 C.F.R. § 300.300 (a)(1).

5. 20 U.S.C. § 1401(3) and 1412(a)(1)(B)(ii).

6. 34 C.F.R. § 300.401.

7. 34 C.F.R. § 300.402.

8. 20 U.S.C. § 1412 (a)(10)(c).

9. 20 U.S.C. § 1401 (25).

10. 34 C.F.R. § 300.16; *see also* 20 U.S.C. § 1401(22).

11. 34 C.F.R. § 104.4(b)(ii), 104.4(b)(iii).

12. 20 U.S.C. § 1412(a)(5).

13. 34 C.F.R. § 300.552.

14. 34 C.F.R. § 300.553.

15. *Id.*

16. Thomas K. Gilhool, *The Right to an Effective Education: From Brown to PL 94-142 and Beyond.* Dorothy Lipsky and Alan Gartner, *Beyond Separate Education*, 1989.

17. 34 C.F.R. § 300.552.

18. 34 C.F.R. § 300.554.

19. *Id.*

20. 34 C.F.R. § 300.555.

21. 34 C.F.R. § 300.556.

22. The term "parent" is defined to include legal guardians and designated surrogate parents. 20 U.S.C. § 1402(19).

23. 34 C.F.R. § 300.344-300.345

24. 34 C.F.R. § 300.506 *et seq.*

25. 34 C.F.R. § 300.125(a)(1)(i)-(ii).

26. 34 C.F.R. § 300.531 *et seq.*

27. 20 U.S.C. § 1414(b)(3)(I).

28. 20 U.S.C. § 1414(b)(3)(ii).

29. 20 U.S.C. § 1414(b)(2) and (3).

30. 34 C.F.R. § 300.532(c).

31. 34 C.F.R. § 300.532(d).

32. 34 C.F.R. § 300.532(e).

33. 20 U.S.C. § 1414(b).

34. 34 C.F.R. § 300.503(b).

35. 34 C.F.R. § 300.503(c)(1).

36. 34 C.F.R. § 534(b).

37. 34 C.F.R. § 300.341.

38. 34 C.F.R. § 300.343.

39. 34 C.F.R. § 300.344.

40. 34 C.F.R. § 300.502.

41. 34 C.F.R. § 300.504(b).

42. 34 C.F.R. § 300.500 *et seq.*

43. "Neutral" means the officer is not employed by the school or agency servicing the child and does not have a "personal or professional" conflict of interest that would compromise his or her objectivity in the hearing. Both the Bureau of Education for the Handicapped (BEH) and the

Office for Civil Rights (OCR) have stated that school board members cannot serve as hearing officers. (OCR Policy Interpretation No. 6, 43 F.R. 36036, August 14, 1978. BEH policy letter of April 19, 1978, 2 EHLR 211:21).

Appendix D

Letters to Secretary Riley from Members of Congress and from One Governor

Congreſs of the United States
Washington, DC 20515

September 2, 1998

Honorable Richard Riley
Secretary
U.S. Department of Education
Washington, DC 20202

Dear Mr. Secretary:

We are deeply concerned over the U.S. Department of Education's decision to impose "special conditions" on the Commonwealth of Pennsylvania's award under the Individuals with Disabilities Education Act (IDEA) for the 1998-99 school year. It appears that in making this conditional award, the Department is taking the first step towards threatening to deny over $139 million in Federal assistance to over 200,000 children with disabilities in Pennsylvania. We strongly urge you to review the appropriateness of the Department's actions and to consider a more constructive approach to ensuring compliance with IDEA in Pennsylvania.

According to Assistant Secretary Judith Heumann's July 20th award letter to Pennsylvania Secretary of Education Eugene Hickok, the Department's decision to impose these special conditions was based on its conclusion that the Commonwealth "has a history of unsatisfactory performance and has failed to conform to the terms of previous awards with respect to its obligation to ensure provision of a free appropriate public education to children with disabilities". However, this conclusion is largely based on continued problems experienced by only one of Pennsylvania's 501 school districts, the Harrisburg School District.

It is our understanding that the issues related to Pennsylvania's supervision of local districts have already been resolved. The Office of Special Education Programs' (OSEP) 1994 report on the Commonwealth's supervision of school districts was primarily critical of the previous administration's failure to conduct reviews of school districts for compliance with the requirements of IDEA. Since Governor Ridge took office in 1995, Pennsylvania has instituted cyclical reviews of school districts throughout the Commonwealth so that all school districts are reviewed by the Pennsylvania Department of Education (PDE) every 5 years.

We also question the basis upon which the Department has made this decision. It is our understanding that in doing follow-up reviews, the Department focused on a judgmental sample of 6 school districts, with a particular focus on singling out the Harrisburg School District. The Department concedes that despite some continued deficiencies, Harrisburg has made a number of improvements in addressing its compliance issues. Moreover, PDE has extensively monitored the Harrisburg School District in addition to providing it with technical assistance. Given this, we fail to see how the Department can reasonably draw such a conclusion about Pennsylvania's overall performance in exercising supervision of local school districts under the IDEA.

Finally, despite the Harrisburg School District's progress and efforts in continuing to address these issues, the Department on several occasions has urged Pennsylvania to deny Federal IDEA funds to the district. We fail to see how taking this punitive action will improve the current situation in Harrisburg. Such an action would only hurt children with disabilities in the Harrisburg schools and shift even more of the financial costs on to local taxpayers. The Department should support PDE's continued efforts to work with the Harrisburg School District to fully comply with IDEA.

Secretary Hickok and Special Education Director Penn have demonstrated their willingness to do what is necessary to ensure that children with disabilities in Pennsylvania receive a free appropriate public education. We urge you to reconsider the conditions placed on Pennsylvania's IDEA funding and to provide additional assistance to help the Harrisburg School District comply with the IDEA requirements.

If you have any questions regarding this matter, please do not hesitate to contact any of us, or have your staff contact Jeff Andrade on the House Committee on Education and the Workforce staff at 225-6553.

Sincerely,

Bill Goodling

BILL GOODLING
Chairman, Committee on
Education and the Workforce

Arlen Specter

ARLEN SPECTER
U.S. Senator

GEORGE W. GEKAS
Member of Congress

Rick Santorum

RICK SANTORUM
U.S. Senator

THOMAS J. BLILEY, JR.
7TH DISTRICT, VIRGINIA

MEMBER OF:
COMMITTEE ON ENERGY
AND COMMERCE
COMMITTEE ON THE DISTRICT
OF COLUMBIA

Congress of the United States
House of Representatives
Washington, DC 20515-4607

WASHINGTON OFFICE:
[illegible]

DISTRICT OFFICES:
SUITE 101
[illegible]

ES/CCCS
APR 22 11 21 AM '94

April 15, 1994

The Honorable Richard W. Riley
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Riley:

We are writing you to request that the U.S. Department of Education (DOE), Office of Special Education Programs (OSEP), release $50 million in federal special education funding for Virginia public school divisions.

It has been brought to our attention that a disagreement has arisen between the U.S. DOE and the Virginia Department of Education (VDOE) which stems from differing interpretations of policies under the Individuals with Disabilities Education Act (IDEA). It is our understanding that recent negotiations have failed to reach a compromise and Virginia's Attorney General has filed for an injunction asking the U.S. Court of Appeals for the Fourth Circuit in Richmond to order the U.S. DOE to release $50 million used for educating students with disabilities. The Attorney General has also filed an administrative appeal with your Department.

Approximately 76 out of 123,000 special education students are affected by the U.S. DOE's policy interpretation. Clearly, it is unfair to hold all children with special education needs in the Commonwealth hostage to a disagreement over policy interpretation. We urge the U.S. DOE to immediately release the Part B grant award under IDEA while this matter is being resolved at the administrative and the judicial level.

Your prompt response on this matter will be greatly appreciated.

Sincerely,

John Warner
John W. Warner
U.S. Senator

Tom Bliley
Thomas J. Bliley, Jr.
Member of Congress

Chuck Robb
Charles S. Robb
U.S. Senator

Herbert H Bateman
Herbert H. Bateman
Member of Congress

Rick Boucher
Rick Boucher
Member of Congress

Leslie Byrne
Leslie L. Byrne
Member of Congress

Bob Goodlatte
Robert W. Goodlatte
Member of Congress

Jim Moran
James P. Moran
Member of Congress

LF Payne
Lewis F. Payne
Member of Congress

Owen Pickett
Owen B. Pickett
Member of Congress

Bobby Scott
Robert C. Scott
Member of Congress

Norm Sisisky
Norman Sisisky
Member of Congress

Frank R Wolf
Frank R. Wolf
Member of Congress

COMMONWEALTH of VIRGINIA
Office of the Governor

George Allen
Governor

February 18, 1994

VIA FACSIMILE

The Honorable Richard W. Riley
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D. C. 20202

Dear Secretary Riley:

I am writing to request your assistance related to the education of children with disabilities in Virginia.

In December 1993, the Office of Special Education Programs (OSEP) requested that the Virginia Department of Education (VA DOE) incorporate in its state regulations a requirement that when a child with a disability is expelled or suspended from school because of misconduct which has been properly determined to be unrelated to the disability, the local school division must continue to provide the child with a free appropriate public education. OSEP also indicated that unless VA DOE implemented this "request", approximately $60 million in funding under the Individuals With Disabilities Act (IDEA) would be withheld.

As you know, special education services are provided in accordance with a student's individual education plan (IEP). The IEP must meet the disability-related needs of the student. Under OSFP's policy, however, the IEP would be amended based, not on a student's disability, but on student behavior having nothing to do with his or her disability. Such a policy is without statutory support, and is not set forth in any regulation.

The circumstances in which this issue has arisen are set forth in the attached memorandum from Dr. William C. Bosher, Jr., Superintendent of Public Instruction. Of particular importance, VA DOE has met all other requirements to receive federal funds under this program.

State Capitol • Richmond, Virginia 23219 • (804) 786-2211 • TDD (804) 371-8015

The legal validity of OSEP's "request" is subject to serious question, and the withholding of funds under these circumstances is particularly inappropriate. Many localities throughout Virginia face imminent fiscal hardship as a result of OSEP's action. At a minimum, the affected funds should be released immediately, and the opportunity afforded for the issue to receive full consideration without bringing harm to the many special education children and school divisions which count on this Federal support.

As a former governor yourself, you can well appreciate the deep concern generated here in Virginia by the withholding of approximately $60 million in federal funds to which the Commonwealth of Virginia is entitled under applicable law and regulations.

My concerns, however, go beyond the issues of federalism and finances implicated by OSEP's policy. There are also important issues of school safety and student accountability.

OSEP's policy essentially instructs students with disabilities that they may violate school disciplinary rules with impunity. Under OFP's policy, students with disabilities enjoy special protection from disciplinary action even when their actions, constituting violations of school regulations, are unrelated to any disabling condition or conditions. This is true even in circumstances where the disability is slight and the violation is quite serious, such as bringing a firearm to school, assaulting a teacher, or distributing drugs.

Concern for the safety of students and teachers alike counsels strongly against OSEP's policy. Moreover, these are times when young people need to be taught to assume responsibility for their actions, and OSEP's policy sends exactly the opposite message.

Let me assure you that we in Virginia have the highest commitment to the rights and interests of disabled citizens, and to full compliance with all applicable federal provisions. The OSEP policy, however, is to the detriment of all students -- disabled and non-disabled. It is an ill-conceived "request", and one which is without a sound basis in law or public policy.

I respectfully urge you to order that the affected funds be released during the pendency of this dispute. Further, I request that the Commonwealth of Virginia be afforded a fair and adequate opportunity to present our position on this important question for consideration by you and, if necessary, the President.

The President has expressed a desire to relieve the states of unnecessary and excessive federal mandates. We are heartened by that timely expression, and look forward to your beneficial intervention in this matter.

Sincerely,

George Allen

George Allen

GA/jbw

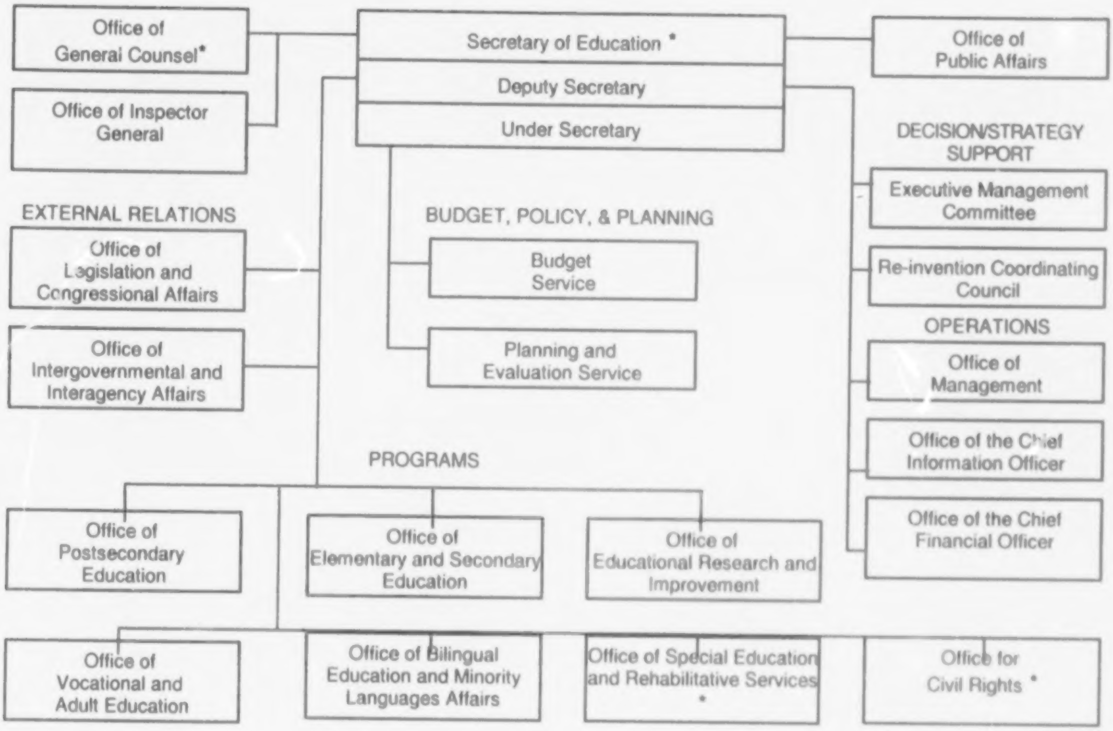
Attachment

cc: The Honorable Beverly T. Sgro
Secretary of Education

Dr. William C. Bosher, Jr.
Superintendent of Public Instruction

Appendix E

Organizational Structure of the U.S. Department of Education


Office of General Counsel*
Office of Inspector General
Secretary of Education *
Deputy Secretary
Under Secretary
Office of Public Affairs
DECISION/STRATEGY SUPPORT
Executive Management Committee
Re-invention Coordinating Council
EXTERNAL RELATIONS
Office of Legislation and Congressional Affairs
Office of Intergovernmental and Interagency Affairs
BUDGET, POLICY, & PLANNING
Budget Service
Planning and Evaluation Service
OPERATIONS
Office of Management
Office of the Chief Information Officer
Office of the Chief Financial Officer
PROGRAMS
Office of Postsecondary Education
Office of Elementary and Secondary Education
Office of Educational Research and Improvement
Office of Vocational and Adult Education
Office of Bilingual Education and Minority Languages Affairs
Office of Special Education and Rehabilitative Services *
Office for Civil Rights *

* Offices with IDEA-related enforcement responsibilities

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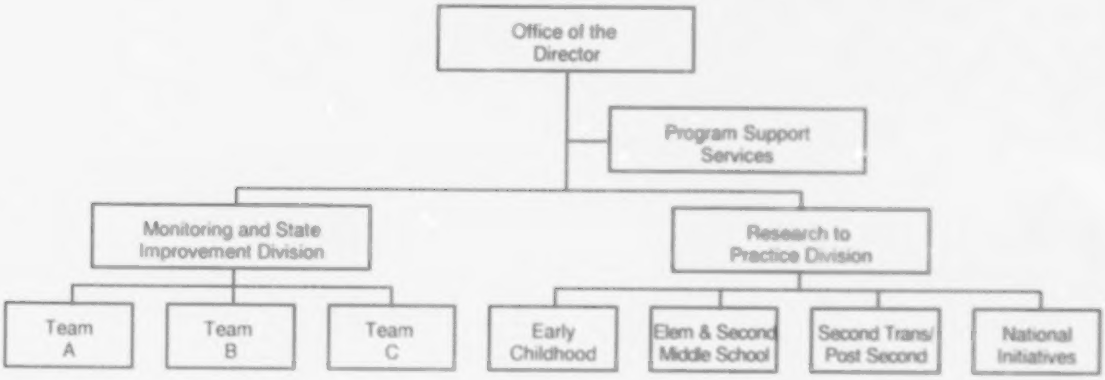
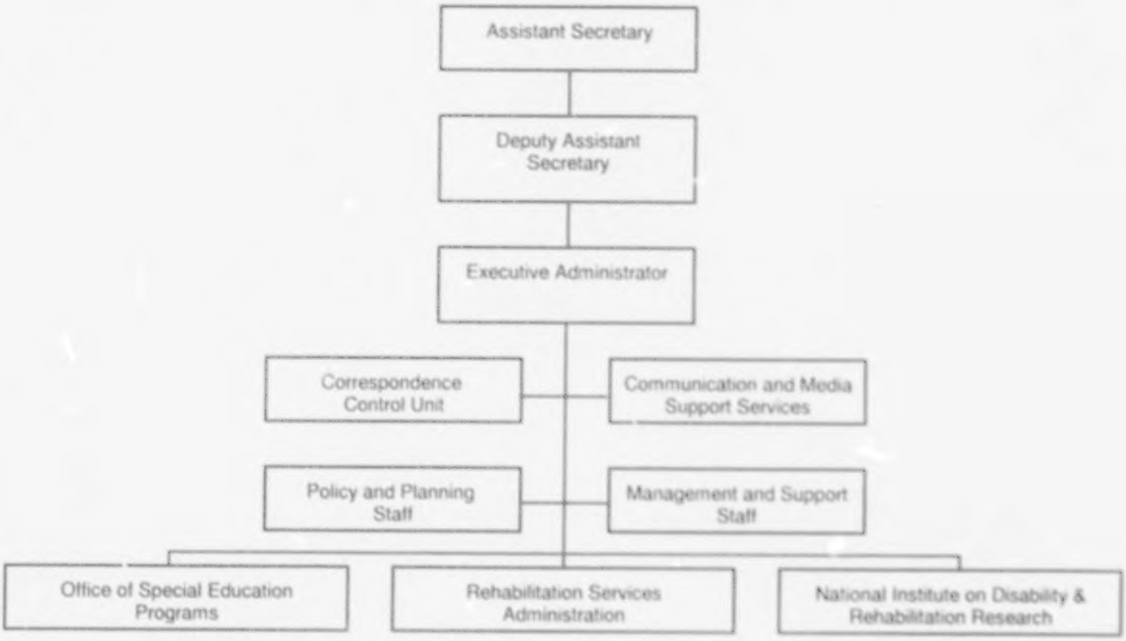
Office of Special Education Programs


Office of the Director
Program Support Services
Monitoring and State Improvement Division
Research to Practice Division
Team A
Team B
Team C
Early Childhood
Elem & Second Middle School
Second Trans/ Post Second
National Initiatives

Office of Special Education and Rehabilitative Services


Assistant Secretary
Deputy Assistant Secretary
Executive Administrator
Correspondence Control Unit
Communication and Media Support Services
Policy and Planning Staff
Management and Support Staff
Office of Special Education Programs
Rehabilitation Services Administration
National Institute on Disability & Rehabilitation Research

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Appendix F

Responsibilities of Each Monitoring and State Improvement Team*

MONITORING

- Develop and implement a program of monitoring and technical assistance.
- Conduct pre-site monitoring activities, such as self-assessment, public meetings, outreach meetings, document review, and interviews with knowledgeable individuals, to assist in the identification of issues on which to focus.
- Carry out on-site activities, such as interviews with state education agency (SEA) officials, local education agency (LEA) administrators, and service providers, and document review, for the purpose of identifying areas of noncompliance and determining needed corrective action.
- Develop monitoring report to describe areas of noncompliance and needed corrective action.
- Work with state agencies to develop corrective action plan.
- Provide or coordinate the provision of technical assistance in the development and implementation of the corrective action plan activities.
- Conduct follow-up activities to determine the effectiveness of the completed corrective actions and determine the need for further corrective action activities.
- Maintain records and materials related to compliance monitoring.
- Respond to requests for information on the monitoring of states.
- Review monitoring procedures annually and recommend revisions to improve the effectiveness and efficiency of Monitoring and State Improvement Planning Division (MSIP) monitoring procedures.

ELIGIBILITY DOCUMENTATION/APPLICATION REVIEW

- Inform states of requirements and procedures for submitting eligibility (policy and procedures) documents/application.
- Track required eligibility documents/application submissions and follow up with state agencies, as needed.
- Review state policy and procedures/application documents and recommend approval.
- Coordinate the review and approval of the policy and procedures/application with other teams, divisions, and offices.
- Provide technical assistance to state agencies to amend eligibility documents/application, as needed, to ensure their consistency with federal requirements.
- Prepare the eligibility documentation/application approval and grant award letter and

track through clearance.

- Carry out any follow-up activities, such as reviewing amendments and ensuring appropriate public notification, with the state agencies and other education offices.
- Maintain records and materials related to eligibility documentation/application review and approval.

COMPLAINT RESOLUTION

- Work informally with customers and partners to provide information and resolve complaints.
- Refer complaints received to the SEA and track SEA resolution of complaints.
- Review and draft responses to requests for Secretarial Review.
- Analyze state complaints to determine patterns of noncompliance or problems in resolution and provide technical assistance to the SEA in improving its procedures.

In addition to these monitoring/eligibility determination/complaint activities, the teams provide customer service and participate in core agencywide activities such as strategic planning.

* This description of the Division's activities is adapted from a document provided by the U.S. Department of Education in September 1998, titled ***Monitoring and State Improvement Planning Division***, to reflect some of the operational changes resulting from the IDEA reauthorization.

Appendix G

Summary: State by State Monitoring Outcomes

State Alabama | **Date Monitoring Visit Ended 9/22/95**
Date of Final Report 2/21/96 | **Time Elapsed in Days 152**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	Compliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Alaska | **Date Monitoring Visit Ended 9/27/96**
Date of Final Report 5/14/97 | **Time Elapsed in Days 229**

LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	Compliant
Meetings	Compliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	Compliant
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Compliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**No Information**

State Arizona **Date Monitoring Visit Ended 1/28/94**
Date of Final Report 2/1/95 **Time Elapsed in Days 369**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	Yes
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	2
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	5
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	26
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**No Information**

State Arkansas **Date Monitoring Visit Ended 10/21/94**
Date of Final Report 1/17/95 **Time Elapsed in Days 88**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	Noncompliant
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	Compliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**No Information**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Compliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Compliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State California **Date Monitoring Visit Ended 1/27/95**
Date of Final Report 2/5/96 **Time Elapsed in Days 374**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	8
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	72
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Colorado **Date Monitoring Visit Ended 5/9/96**
Date of Final Report 10/15/96 **Time Elapsed in Days 159**

FAPE	**No Information**
ESY	No Information
Related Services	Compliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	No Information
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Connecticut **Date Monitoring Visit Ended 12/17/93**
Date of Final Report 3/3/95 **Time Elapsed in Days 441**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	5
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	4
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	Noncompliant
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Delaware | **Date Monitoring Visit Ended 12/9/94**
Date of Final Report 3/6/95 | **Time Elapsed in Days 87**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	Noncompliant
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	Compliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	6
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	2
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Compliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Florida **Date Monitoring Visit Ended 1/17/97**
Date of Final Report 9/26/97 **Time Elapsed in Days 252**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	Noncompliant
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Compliant
Review & Approval of LEA Applications	Compliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	5
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	4
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**Compliant**

State Georgia
Date of Final Report 8/30/96

Date Monitoring Visit Ended 5/17/96
Time Elapsed in Days 105

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Compliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	No Information
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	No Information
Meetings	No Information
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	10
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	3
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Hawaii **Date Monitoring Visit Ended 1/27/95**
Date of Final Report 3/8/95 **Time Elapsed in Days 40**

FAPE	**Compliant**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	Compliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**Compliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	Compliant
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Idaho **Date Monitoring Visit Ended 9/23/94**
Date of Final Report 1/23/95 **Time Elapsed in Days 122**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	3
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	17
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Illinois
Date of Final Report 2/21/96

Date Monitoring Visit Ended 5/5/95
Time Elapsed in Days 292

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	Noncompliant
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	Compliant
Meetings	Compliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	No Information
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Compliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Compliant
Prior Notice/Parent Consent	Compliant
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**Noncompliant**

State Indiana
Date of Final Report 2/6/96

Date Monitoring Visit Ended 9/22/95
Time Elapsed in Days 137

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	Compliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Iowa
Date of Final Report 3/20/95

Date Monitoring Visit Ended 4/15/94
Time Elapsed in Days 339

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	Yes
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	21
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	1
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	6
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**No Information**

State Kansas **Date Monitoring Visit Ended 3/15/96**
Date of Final Report 8/13/96 **Time Elapsed in Days 151**

FAPE	**Compliant**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	No Information
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Kentucky **Date Monitoring Visit Ended 9/29/95**
Date of Final Report 5/23/96 **Time Elapsed in Days 237**

FAPE	**Noncompliant**
ESY	Compliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Compliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**No Information**

State Louisiana **Date Monitoring Visit Ended 3/17/95**
Date of Final Report 10/16/95 **Time Elapsed in Days 213**

FAPE	**No Information**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Compliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	3
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**Compliant**

State Maine
Date of Final Report 7/25/97

Date Monitoring Visit Ended 10/3/96
Time Elapsed in Days 295

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Compliant
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**No Information**

State Maryland **Date Monitoring Visit Ended 5/5/95**
Date of Final Report 11/30/95 **Time Elapsed in Days 209**

FAPE	**No Information**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Massachusetts **Date Monitoring Visit Ended 11/3/94**
Date of Final Report 8/17/95 **Time Elapsed in Days 287**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	No Information
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Michigan **Date Monitoring Visit Ended 10/1/93**
Date of Final Report 3/21/95 **Time Elapsed in Days 536**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	6
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	8
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	Noncompliant

State Minnesota **Date Monitoring Visit Ended 9/30/94**
Date of Final Report 12/23/94 **Time Elapsed in Days 84**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	1
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	1
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	3
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	Compliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Mississippi **Date Monitoring Visit Ended 4/25/97**
Date of Final Report 8/22/97 **Time Elapsed in Days 119**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Compliant
Length of School Day	Noncompliant
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**No Information**
Incarcerated Students	Compliant
Review & Approval of LEA Applications	Compliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Missouri | **Date Monitoring Visit Ended 5/2/97**
Date of Final Report 1/8/98 | **Time Elapsed in Days 251**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Montana **Date Monitoring Visit Ended 4/15/94**
Date of Final Report 8/26/94 **Time Elapsed in Days 133**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Nebraska **Date Monitoring Visit Ended 4/2/93**
Date of Final Report 11/29/93 **Time Elapsed in Days 241**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	16
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	1
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**Noncompliant**

State Nevada **Date Monitoring Visit Ended 10/27/95**
Date of Final Report 2/6/96 **Time Elapsed in Days 102**

FAPE	**Compliant**
ESY	Compliant
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General Supervision	**No Information**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Compliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Compliant
Prior Notice/Parent Consent	Compliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State New Hampshire | **Date Monitoring Visit Ended 4/15/94**

Date of Final Report 8/25/94 | **Time Elapsed in Days 132**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statements of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	10
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	7
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	12
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**No Information**

State New Jersey
Date of Final Report 5/18/94

Date Monitoring Visit Ended 4/2/93
Time Elapsed in Days 411

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	Noncompliant
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	24
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State New Mexico **Date Monitoring Visit Ended 12/3/93**
Date of Final Report 3/3/95 **Time Elapsed in Days 455**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	Yes
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	54
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	4
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State New York **Date Monitoring Visit Ended 10/29/93**
Date of Final Report 8/16/94 **Time Elapsed in Days 291**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	36
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	10
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	24
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**Noncompliant**

State North Carolina **Date Monitoring Visit Ended 5/5/95**
Date of Final Report 9/29/95 **Time Elapsed in Days 147**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/ Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	2
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	2
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	40
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State North Dakota **Date Monitoring Visit Ended 12/10/93**
Date of Final Report 5/26/94 **Time Elapsed in Days 167**

FAPE	**No Information**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	Yes
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	No Information
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	3
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Ohio **Date Monitoring Visit Ended 9/30/94**
Date of Final Report 10/13/95 **Time Elapsed in Days 378**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	No Information
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Compliant**
Content	Compliant
Meetings	Compliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Oklahoma **Date Monitoring Visit Ended 5/10/96**
Date of Final Report 6/11/97 **Time Elapsed in Days 397**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	Compliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	Noncompliant
General **Supervision**	**No Information**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	No Information
Content of Notice	Compliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Oregon — **Date Monitoring Visit Ended 5/2/97**
Date of Final Report 1/8/98 — **Time Elapsed in Days 251**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	Compliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Compliant**
Hearing Decisions within 45 Days	Compliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Pennsylvania | **Date Monitoring Visit Ended 3/12/93**
Date of Final Report 3/31/94 | **Time Elapsed in Days 384**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	4
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	6
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Rhode Island | **Date Monitoring Visit Ended 1/26/96**
Date of Final Report 7/24/96 | **Time Elapsed in Days 180**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	Noncompliant
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	No Information
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Compliant
# of Requirements Lacking Method	
Complete Method to Determine Compliance	Compliant
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	24
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State South Carolina **Date Monitoring Visit Ended 3/31/95**
Date of Final Report 8/4/95 **Time Elapsed in Days 126**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	Compliant
Meetings	No Information
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	No Information
Complaint Management	Noncompliant
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	No Information
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State South Dakota
Date of Final Report 5/6/94

Date Monitoring Visit Ended 3/25/94
Time Elapsed in Days 42

FAPE	**Compliant**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Compliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	No
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Compliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Tennessee **Date Monitoring Visit Ended 1/26/96**
Date of Final Report 7/24/96 **Time Elapsed in Days 180**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Compliant
# of Requirements Lacking Method	
Complete Method to Determine Compliance	Compliant
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Texas **Date Monitoring Visit Ended 9/20/96**
Date of Final Report 9/16/97 **Time Elapsed in Days 361**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	4
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Compliant**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Utah | **Date Monitoring Visit Ended 9/24/93**
Date of Final Report 11/17/94 | **Time Elapsed in Days 419**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/ Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	Noncompliant
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	Yes
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	No Information
Statement of Needed Services	Noncompliant
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	No Information
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	4
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	8
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**No Information**

State Vermont **Date Monitoring Visit Ended 9/22/95**
Date of Final Report 2/8/96 **Time Elapsed in Days 139**

FAPE	**Noncompliant**
ESY	No Information
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	Noncompliant
LRE	**No Information**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	Yes
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Compliant
Complaint Management	Compliant
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	No Information
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	No Information
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Compliant**

State Virginia	**Date Monitoring Visit Ended 5/5/95**
Date of Final Report 9/29/95	**Time Elapsed in Days 147**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	No Information
Nonacademic & Extracurricular	No Information
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	No Information
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	5
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	10
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	Compliant
Content of Notice	Compliant
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Washington **Date Monitoring Visit Ended 1/14/94**
Date of Final Report 3/15/95 **Time Elapsed in Days 425**

FAPE	**No Information**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Noncompliant
Resolved within 60 Days	Noncompliant
Resolve Any Complaint	Noncompliant
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	11
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	14
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	31
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	Noncompliant
Prior Notice/Parent Consent	Noncompliant
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**Noncompliant**

State West Virginia
Date of Final Report 4/22/97

Date Monitoring Visit Ended 12/6/96
Time Elapsed in Days 137

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	Noncompliant
Continuum Available to Extent Necessary	Noncompliant
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**No Information**
Content	No Information
Meetings	Compliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Compliant
Complaint Management	No Information
Resolved within 60 Days	Compliant
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Compliant
# of Requirements Lacking Method	
Complete Method to Determine Compliance	No Information
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**No Information**
Hearing Decisions within 45 Days	No Information
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	Compliant
Protection in Evaluation	**Compliant**

State Wisconsin **Date Monitoring Visit Ended 10/22/93**
Date of Final Report 12/23/94 **Time Elapsed in Days 427**

FAPE	**Noncompliant**
ESY	Noncompliant
Related Services	Noncompliant
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/ Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	Yes
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	Noncompliant
Transition Services	**Noncompliant**
Notice	Noncompliant
Statement of Needed Services	Noncompliant
Meeting Participants	Noncompliant
General Supervision	**Noncompliant**
Incarcerated Students	No Information
Review & Approval of LEA Applications	Noncompliant
Complaint Management	No Information
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	15
Correction of Deficiencies	Noncompliant
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	No Information
Protection in Evaluation	**Noncompliant**

State Wyoming
Date of Final Report 3/3/95

Date Monitoring Visit Ended 4/29/94
Time Elapsed in Days 308

FAPE	**No Information**
ESY	No Information
Related Services	No Information
Length of School Day	No Information
Provision of Special Education/Program Options Available	No Information
LRE	**Noncompliant**
Ed. w/Nondis./Removal only when Aids/Services Standard Met	Noncompliant
Nonacademic & Extracurricular	Noncompliant
Placement Based on IEP	No Information
Continuum Available to Extent Necessary	No Information
Placement Determined at Least Annually	No Information
If no LRE Noncompliance, was Segregated School Visited?	N/A
Was School for the Blind or Deaf Visited?	No
Was Private Segregated School Visited?	No
Were Files of Students Placed out of State Reviewed?	No
IEPs	**Noncompliant**
Content	Noncompliant
Meetings	No Information
Transition Services	**No Information**
Notice	No Information
Statement of Needed Services	No Information
Meeting Participants	No Information
General Supervision	**Noncompliant**
Incarcerated Students	Noncompliant
Review & Approval of LEA Applications	Noncompliant
Complaint Management	Compliant
Resolved within 60 Days	No Information
Resolve Any Complaint	No Information
State Monitoring of LEAs	Noncompliant
Method to Determine Compliance	Noncompliant
# of Requirements Lacking Method	11
Complete Method to Determine Compliance	Noncompliant
# of Requirements Lacking Complete Method	3
Effective Method for Identifying Deficiencies	Noncompliant
# of Discrepancies between Federal & State Monitoring	1
Correction of Deficiencies	No Information
Procedural Safeguards	**Noncompliant**
Hearing Decisions within 45 Days	Noncompliant
Content of Notice	No Information
Prior Notice/Parent Consent	No Information
Establishment of Procedural Safeguards	Noncompliant
Protection in Evaluation	**No Information**

Appendix H

Overview of the New Continuous Improvement Monitoring System

In February 1998, the Office of Special Education Programs (OSEP) convened a national meeting of advocates and parents of children with disabilities, representatives from the states, and other stakeholder groups to gather input for the proposed revision of OSEP's monitoring system. Their input significantly affected the design of the revised system. Program improvement, accountability for outcomes, collaboration, and compliance are the multiple objectives of the new continuous improvement monitoring system. OSEP claims a stronger focus on state improvements that will significantly improve outcomes for children with disabilities without diminishing the focus on ensuring compliance. OSEP sees monitoring as having two main components, both necessary to improving compliance and actual results for children in each state. The first component is the review and corrective action/improvement process in each state, which should focus on those requirements having the greatest impact on improving results for children. The second is the data collection to support findings of noncompliance, which is still necessary.

The revised procedures will require states to assume accountability for measuring and reporting progress, identifying weak areas and identifying and implementing strategies for improvement. It will require each state to collect and use data newly required under the IDEA '97 amendments.[1] Each state will work with a steering committee made up of a broad range of stakeholders, including advocates and parents, to design and implement an ongoing monitoring process focused on improving results for children and youth with disabilities. OSEP will periodically visit programs in the states to verify their self-assessments.

Although states are not required to have a steering committee to conduct its self-assessment process, OSEP is strongly encouraging every state to use the steering committee mechanism and to ensure representation of all stakeholder interests in the self-assessment process.[2]

The concept of the new monitoring process differs significantly from that of the old model. OSEP defines its key characteristics as follows:

- A continuous, rather than episodic, accountability system that integrates self-assessment, continuous feedback, and response and is clearly linked to systemic change.
- A partnership with parents, students, state education agencies (SEAs), local education agencies (LEAs), and other federal agencies in a collaborative process in which stakeholders are part of the entire process, including
  - the setting of goals and benchmarks;
  - the collection and analysis of self-assessment data;
  - the identification of critical problem issues and solutions; and
  - the development, implementation, and oversight of improvement strategies to ensure compliance and improved results for children and youth with disabilities.
- A continuous improvement monitoring process in each state driven by data that focus on improving results.
- Self-assessment and monitoring processes in each state that are public, with broad dissemination of self-assessment results, monitoring reports, and the design, implementation, and results of correction/improvement plans.
- Technical assistance from OSEP as part of its on-site work in each state.
- Technical-assistance plans as part of corrective action/improvement plans in each state. .
- The use of Regional Resource Centers and the National Early Childhood Technical Assistance System (NECTAS) for technical assistance throughout continuous improvement process in each state.

1. 20 U.S.C. § 1418(a).

2. Conversation with Larry Ringer, Office of Special Education Programs, Washington, DC, September 2, 1999.

Appendix I

Complaints Received b Office for Civil Rights y the, U.S. Department of Education, Related to Primary or Secondary Schools

The following tables reflect discrimination complaints filed with the Office for Civil Rights (OCR) for the period October 1, 1993–May 4, 1998. The complaint data displayed in these tables are only those for which the respondent was a primary or secondary school. OCR has classified all the complaints included in these tables as complaints related to Title II of the Americans with Disabilities Act (ADA); most of them are also classified as complaints related to Section 504 of the Rehabilitation Act. There are 5,684 individual complainants (5,584 nonduplicative docket numbers) for the reporting period. These complainants raise 12,349 issues. Complainants often raise more than one issue and OCR treats each issue separately. The complaints and issues raised with respect to primary and secondary schools constitute 72.3 percent of all the individual complainants and 74.7 percent of all issues raised with the Office for Civil Rights under ADA Title II.

Chart 26 shows that the key issues for an ADA/504 complaint are admission to an education program, program services for students with disabilities, and student treatment in areas such as discipline, awards, and honors, and student or parents' rights. By far, the issue for which the most complaints are filed involves enrollment recruitment, requirements, or selection criteria and procedures. The disabilities of the complainants vary. As it is noted in Table 27, a fairly large proportion (18.65%) of the students identified had learning disabilities. Attention Deficit and Hyperactivity Disorder (ADHD) also accounts for a noticeable proportion of the complainants. Approximately 33 percent of the complainants are categorized as "general" disability or "other handicapped." It is unclear from these categories what types of disabilities are experienced by those complainants. What is clear, however, is that a large proportion of the ADA/504 complaints lodged against school districts involve students with cognitive disabilities.

The distribution of complaint resolutions is displayed in Table 28. This distribution demonstrates the OCR focus on facilitating a resolution between the parties, rather than determining violations. Approximately 40 percent of the cases are reported closed by a resolution developed by the respondent, OCR, or another federal agency (and accepted by OCR). In approximately 13 percent of the complaints, the case is closed by referral to another federal agency for investigation or resolution. OCR finds insufficient basis or evidence to support an allegation or finding in approximately 16 percent of the cases. The remaining complaints do not result in a finding for the complainant for a variety of technical reasons, including the absence of a signed consent by the complainant, a lack of cooperation by the complainant, lack of OCR jurisdiction, withdrawal of the complaint by the complainant, or because the complaint was previously investigated and handled and OCR has judged the current complaint as substantially the same as the previously handled complaint.

Chart 25: Number of OCR Complaints From Primary or Secondary Schools Identified as "Title II Only" or "ADA/504"

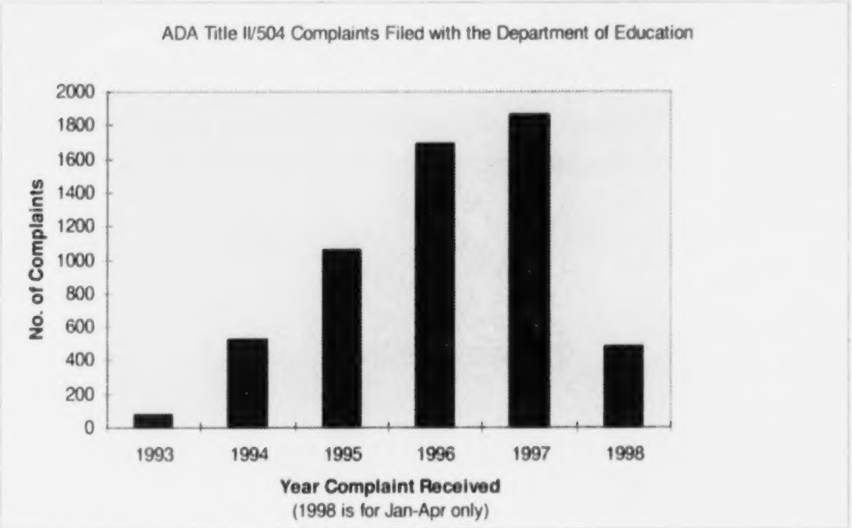
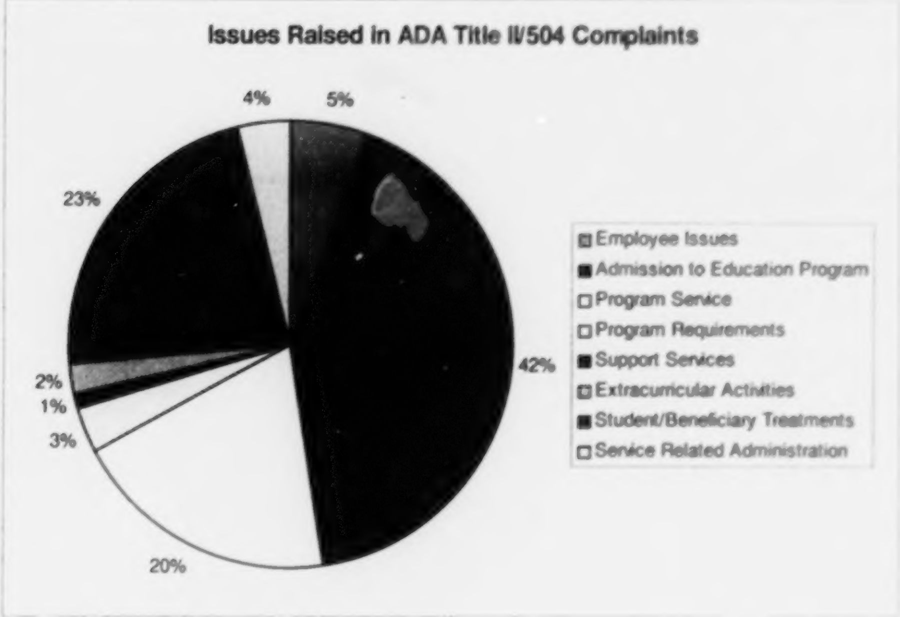


Chart 26: Issues Raised in DOE/OCR Title II and ADA/504 Complaints



Total number of Issues Raised: 12,349

5%	Employee Issues
42%	Admission to Education Program
20%	Program Services
3%	Program Requirements
1%	Support Services
2%	Extracurricular Activities
23%	Student/Beneficiary Treatments
4%	Service Related Administration

Table 27: Type of Disability Constituting Basis of Complaint for OCR Complaints*

General	23.96%
Other health impairments	6.68%
Hearing problems	2.72%
Learning disability	18.65%
Mental illness	8.19%
Mental retardation	4.64%
Orthopedic or physical deformity impairment	6.51%
Visual impairments	1.26%
Attention Deficit Disorder (ADD)	7.38%
Attention Deficit Hyperactivity Disorder (ADHD)	8.79%
Speech impairment	1.29%
Other handicapped	9.00%
Miscellaneous (e.g., HIV/AIDS, cancer, alcohol, epilepsy)	0.94%
Total (n = 11,281)	100.0%

* Bases are calculated by issue, thus total number of bases is larger than total number of complainants.

Table 28: Distribution of OCR Complaint Resolutions*

Resolved by referral to other federal agency	1.61%
Not enough information or signed consent to proceed	4.78%
Complaint not timely	2.89%
OCR has no jurisdiction	9.07%
Complaint too suspect to proceed	0.68%
Previously investigated & handled	1.45%
Allegation is being investigated by another federal agency	11.61%
Resolved by respondent (recipient)	11.86%
OCR facilitated early resolution (ECR)	6.75%
OCR negotiates agreement for corrective action	19.96%
Resolved by other agency, OCR accepts outcome	1.33%
Complainant withdraws complaint	5.42%
Insufficient factual basis to support allegation	6.64%
Insufficient evidence to support finding of a violation	8.06%
No violation Letter of Findings (LOF) issued	0.67%
OCR negotiates agreement for corrective action & issues a "violation corrected" LOF	0.57%

Complainant does not cooperate	1.37%
Misc.	0.20%
Allegation moot or complainant died & allegations cannot be pursued	4.72%
Will treat as compliance review	0.37%
Total (n = 11,198)	100.00%

*Each issue raised has a resolution code. Total number of resolutions is larger than total number of complainants.

Appendix J

List of Acronyms

ACAA	Air Carrier Access Act
ADA	Americans with Disabilities Act
ADD	Administration on Developmental Disabilities
ADHD	Attention Deficit and Hyperactivity Disorder
AKDE	Alaska Department of Education
ALJ	Administrative Law Judge
BEH	Bureau of Education for the Handicapped
CAP	Corrective Action Plan
CBE	Chicago Board of Education
CCD	Consortium of Citizens with Disabilities
CDE	California Department of Education
CSDE	Colorado State Department of Education
CSPD	Comprehensive System of Personal Development
DBTAC	Disability Technical Assistance Center
DCPS	District of Columbia Public Schools
DoED	Department of Education
DOJ	Department of Justice
DREDF	Disability Rights Education and Defense Fund
ECR	OCR-Facilitated Early Resolution
EDGAR	Education Department General Administrative Regulations
EHA	Education for All Handicapped Children Act
ESY	Extended School Year
FAPE	Free Appropriate Public Education

FHAA	Fair Housing Act
FLDE	Florida Department of Education
FTE	Full-time Equivalent
GAO	General Accounting Office
GEPA	General Education Provisions Act
GPRA	Government Performance and Results Act
HCPA	Handicapped Children's Protection Act
IDE	Iowa Department of Education
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IG	Inspector General
ISBE	Illinois State Board of Education
KDE	Kentucky Department of Education
KSBE	Kansas State Department of Education
LEA	Local Education Agency
LOF	Letters of Findings
LRE	Least Restrictive Environment
MASSDE	Massachusetts Department of Education
MDE	Minnesota Department of Education
MDOE	Maine Department of Education
MOU	Memorandum of Understanding
MSIP	Monitoring and State Improvement Planning Division

NAPAS	National Association of Protection and Advocacy Systems
NARIC	National Rehabilitation Information Center
NASDSE	National Association of State Directors of Special Education
NCD	National Council on Disability
NICHCY	National Information Center for Children and Youth with Disabilities
NIDRR	National Institute on Disability and Rehabilitation Research
NMSDE	New Mexico State Department of Education
NPND	National Parent Network on Disabilities
NYSED	New York State Education Department
OCR	Office for Civil Rights
OD	Office of the Director
OGC	Office of General Counsel
OIG	Office of the Inspector General
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitative Services
P&A	Protection and Advocacy
PAAT	Protection & Advocacy for Assistive Technology
PADD	Protection and Advocacy for Persons with Developmental Disabilities
PAIR	Protection and Advocacy for Individual Rights
PAR	Program Administrative Review
PDE	Pennsylvania Department of Education
PRDE	Puerto Rico Department of Education
PTI	Parent Training and Information
RCF	Residential Care Facilities
RFP	Request for Proposal
RSA	Rehabilitation Services Administration

RTP	Research to Practice Division
SCDE	South Carolina Department of Education
SEA	State Education Agency
SEP	Special Education Program
TEA	Texas Education Agency
VADOE	Virginia Department of Education
VIDE	Virgin Islands Department of Education

Appendix K

Consolidated List of Findings and Recommendations

Consolidated List of Findings and Recommendations

I. The Law, the Compliance/Enforcement Scheme, and the Context

Finding # I.1

The effectiveness of DoED's internal coordination among the various offices and teams involved in IDEA implementation and enforcement is unclear.

LOSEP is responsible for IDEA compliance monitoring and enforcement consulting with several other offices within the Department of Education, as needed. Within OSEP, the close integration of enforcement responsibility with responsibilities for state grant administration, compliance monitoring, technical assistance, and program improvement can lead to conflicting internal objectives. There appears to be no process for assessing whether the current approach to internal collaboration has helped or hindered IDEA enforcement.

Recommendation # I.1

The Department of Education should assess whether its current internal organization and division of IDEA grant administration and enforcement functions/responsibilities effectively supports the Department's goals to correct persistent state noncompliance.

OSEP, the Office for Civil Rights (OCR), and perhaps the Office of General Counsel (OGC) should further articulate the objectives of their joint activities in relation to the enforcement of IDEA, Section 504, and ADA Title II, and describe the specific mechanisms and divisions of responsibility they have developed to implement each objective. In addition, OSEP and OCR should evaluate the effectiveness of their current collaboration for improving compliance monitoring and enforcement of IDEA.

Finding # I.2

The Department of Education's mechanisms for external coordination and collaboration to better implement and enforce IDEA need to be evaluated.

Recommendation # I.2

The Department of Education should also articulate the objectives and mechanisms for collaborating with other government agencies (i.e., the Department of Justice and the

Department of the Interior) on the enforcement of IDEA, and evaluate their effectiveness on an ongoing basis. At least every two years, DoED's annual report to Congress should report on the effectiveness of these mechanisms and the agencies' progress toward meeting their collaboration objectives.

II. Grassroots Perspectives on Noncompliance and Federal Enforcement of IDEA

Finding # II.1A

The ongoing struggles of many students with disabilities, their parents, and advocates to obtain services under IDEA leaves them with the impression that the Federal Government is not enforcing the law.

Finding # II.1B

As a result of 25 years of nonenforcement by the Federal Government, parents are the main enforcement vehicle for ensuring compliance with IDEA.

Recommendation # II.1A

The Department of Education must exercise leadership in enforcing the law, with parents as partners and resources in carrying out their enforcement mandate.

Recommendation # II.1B

The Department of Education should publicly articulate and implement an enforcement philosophy and plan that includes the strategic use of litigation and administrative sanctions. When noncompliance is not corrected within the agreed upon time frame, the Department of Education should aggressively enforce the law, using clearly defined appropriate sanctions to improve accountability and achieve compliance with the law.

Finding # II.2

Parents have identified a number of obstacles to their participation as full partners in the IDEA monitoring and enforcement processes.

- **Parents have not been invited consistently to be involved in the monitoring process,**

and if invited, have not been given an opportunity consistently to be heard.

- **Parents are not knowledgeable enough about either the requirements of IDEA or the monitoring and enforcement processes.**
- **The presentation of compliance information in the monitoring reports is inconsistent from one monitoring period to the next, making evaluation of improvements over time difficult.**

The recommendations below address how some of these obstacles can be corrected.

Recommendation # II.2A

OSEP should encourage the involvement of students with disabilities and their parents as resources to improve monitoring.

Parents stressed that they and their children have the "frontline" experience and expertise with the districts in their states and would like increased involvement in directing the monitoring process and resources to areas of noncompliance that they have already identified.

Recommendation # II.2B

Congress should direct a change in the mission of the P&As and IL centers to include a priority focus on special education advocacy, and in collaboration with the PTIs, the development of a collaborative special education advocacy strategy for their states.

The combined resources of PTIs, P&As, and IL centers are needed to develop and maintain special education advocacy services and programs statewide at a level commensurate with the need of students with disabilities and their parents for assistance in obtaining services and supports under IDEA, as well as participating effectively in monitoring and enforcement.

Recommendation # II.2C

OSEP should standardize the presentation of the monitoring reports and data.

Such standardization is essential for accurate and credible evaluation of compliance from one monitoring period to the next.

III. Grant Administration, Compliance Monitoring, Complaint Handling, and Enforcement Functions

Finding # III A.1

Many states are found eligible for full funding under Part B of IDEA while simultaneously failing to ensure compliance with the law.

Although no state is fully ensuring compliance with IDEA, states usually receive full funding every fiscal year. Once eligible for funding, a state receives regular increases, which are automatic under the formula. OSEP's findings of state noncompliance with IDEA requirements usually have no effect on that state's eligibility for funding unless (1) the state's policies or procedures create systemic obstacles to implementing IDEA, or (2) persistent noncompliance leads OSEP to enforce by imposing high risk status with "special conditions" to be met for continued funding.

Recommendation # III A.1

The Department of Education should link a state's continued eligibility for federal funding under Part B to the remedy of any noncompliance within the agreed upon time frame.

When a state is found out of compliance with the law via federal monitoring, continued eligibility for IDEA funding should be linked with achieving compliance within a designated time frame. The state corrective action plan or compliance agreement should spell out what must be done within a specific time frame to achieve compliance or the state will be found ineligible for all or part of the available grant money for the next fiscal period.

Finding # III A.2

The competitive state Program Improvement Grants are intended to make funding available to states for implementing improvement strategies to correct IDEA noncompliance problems.

Recommendation # III A.2A

OSEP should require that five percent of funds awarded under the State Program Improvement Grants be applied toward developing a statewide standardized data collection and reporting system for tracking the core data elements needed to measure state compliance

with IDEA and evaluate educational results for children with disabilities.

Recommendation # III A.2B

When a state is found out of compliance with the law via federal monitoring, continued eligibility for State Program Improvement Grant funding should be linked with achieving compliance within a designated time frame.

Finding # III B.1A

After 25 years, all states are out of compliance with IDEA to varying degrees.

An analysis of the most recent federal monitoring report available for each state (from 1994–1998) indicated that no state had carried out its responsibilities to ensure compliance with all the requirements of Part B. While the degree of noncompliance with any given requirement (based on number and seriousness of infractions) varied among the states, many states had failed to ensure compliance with a significant number of requirements. Of the seven areas analyzed, 24 percent, or 10 states, had failed to ensure compliance in five areas; 24 percent, or 10 states, had failed to ensure compliance in six areas; and 12 percent, or six states, had failed to ensure compliance in seven areas. Four percent, or two states, had failed to ensure compliance in only one area.

Finding # III B.1B

More than half of the states have failed to ensure full compliance with the following areas: general supervision (90%, or 45 states); transition (88%, or 44 states); free appropriate public education (80%, or 40 states); procedural safeguards (78%, or 39 states); and least restrictive environment (72%, or 36 states).

Other areas in which states failed to ensure compliance are IEPs (44%, or 22 states) and protection in evaluation (38%, or 19 states).

Recommendation III B.1A

Congress should ask the General Accounting Office (GAO) to conduct a study of the extent to which SEAs and LEAs are ensuring that the requirements of IDEA in the areas of general supervision, transition, free appropriate public education, procedural safeguards, and least

restrictive environment are being met. In addition, the Department of Education should conduct regular independent special education audits (fiscal and program) initiated by the DoED Office of Inspector General (OIG). The purpose of the audits would be to examine whether federal funds granted under IDEA Parts B and D (State Program Improvement Grants) have been and are being spent in compliance with IDEA requirements. These audits should be a supplement to OSEP's annual compliance monitoring visits, and the audit results should be in DoED's annual report to Congress. To the extent that the DoED OIG lacks the subject matter expertise to conduct program audits under IDEA, the OIG should contract with independent entities having such expertise when a program audit is necessary.

Recommendation # III B.1B

Congress should fund an independent consortium of nongovernment entities in every state to develop and conduct independent monitoring and to produce independent reports to the President and Congress on the status of each state's compliance with IDEA at the local level. Members of the nongovernment consortium should include, but not be limited to, the state's PTI, P&A, and IL centers.

While parents of children with disabilities and students and adults with disabilities participate in the federal monitoring process, they have no independent means for assessing the extent or quality of state compliance, for determining why state failure to ensure compliance persists, and for communicating these findings to the President and Congress. They need to be able to provide reliable and regular assessments of their state's compliance with IDEA, as well as a realistic picture of the toll of noncompliance on children and families in their state, to federal and state leaders and to the public at large.

Finding # III B.2

OSEP did not have an explicit objective standard for assessing whether noncompliance with IDEA requirements found in any given state was systemic.

OSEP staff indicated that a state was found noncompliant with a given requirement only if the failure to ensure compliance was "systemic," (i.e., observed by monitors "with some frequency").[1] For example, a finding of noncompliance could have meant that out of 10 schools monitored, anywhere from three to 10 had failed to ensure compliance with a given requirement. There was no established standard (quantitative or qualitative) by which OSEP made a determination that noncompliance was systemic.

Recommendation # III B.2A

The Department of Education should establish and use national compliance standards and objective measures for assessing state progress toward better performance results for children with disabilities and for achieving full compliance with IDEA.

Recommendation # III B.2B

OSEP should work with the states, students with disabilities, their parents, and other stakeholders to identify the core data elements needed to assess whether compliance standards are being met and performance results for children with disabilities are improving statewide.

Recommendation # III B.2C

OSEP should closely monitor state progress in developing reliable data collection and reporting mechanisms (qualitative and quantitative) that adequately and accurately assess both state compliance and performance results for children with disabilities. This recommendation coincides with a central goal of the 1997 IDEA reauthorization to focus IDEA implementation more closely on objective performance standards and results measures.

Recommendation # III B.2D

OSEP should make as its own compliance monitoring priority for the next five years the assessment of state progress toward creating reliable and comprehensive data (quantitative and qualitative) to support effective state compliance monitoring capabilities.

Finding # III B.3

OSEP's monitoring reports did not clearly indicate which IDEA requirements were monitored, why they were monitored, and what the compliance status was.

OSEP reported placing "a strong emphasis on those requirements most closely associated with positive results for students with disabilities,"[2] and appeared to monitor a stable core of requirements in every state. It also used information gathered during the pre-site process to help determine what to monitor.

Federal monitoring reports, however, did not display all the requirements monitored, nor did they consistently specify the requirements with which the state appeared to comply, based on the sample of districts, student files, interviews, and state policies and procedures, as well as state monitoring documents reviewed. In some cases, requirements with which the state appeared to comply were mentioned in report cover letters, and in other cases they were not. Therefore, it was not always possible to determine all the requirements monitored and the compliance status of each.

Recommendation # III B.3

All OSEP monitoring reports should consistently state what requirements were monitored, the rationale for choosing those requirements, which ones were in compliance, and which ones were out of compliance.

Such reporting would have enabled a comparison between reports and over time. It also would have enabled an understanding of where states were determined definitively to be in compliance, which might have offered opportunities for positive acknowledgment.

Finding # III B.4

OSEP monitoring did not include observation of students; rather it involved collecting and reading documents and interviewing education personnel.

In the experience of OSEP staff, observing students consumed a great deal of time and often did not yield enough conclusive data to make clear-cut compliance determinations. Many parents and advocates criticized the monitoring process, however, as one that focused too much on talking with education personnel and reading documentation. Their concern was that this approach did not provide an adequate measure of the extent to which students were being appropriately served.

Recommendation # III B.4A

OSEP's monitoring process in each state should routinely include an ethnically diverse sample of children who are matched to their records and who are interviewed, along with their parents and service providers, for a determination of whether the law's requirements are being met on their behalf.

Routinely including interviews with children from ethnically diverse backgrounds, their parents, and their service providers in the monitoring process would have provided a more grounded understanding of the states' compliance picture.

Recommendation # III B.4B

OSEP should review the files of more students placed in out-of-state residential facilities, and increase the number of compliance monitoring site visits to separate public and private facilities as well as to state schools for students who are deaf or have visual impairments.

Finding # III B.5

A complete historical inventory of all monitoring reports issued for every state is not available, but since 1990 all reports issued have been maintained.

The historical monitoring data in these early reports were crucial to understanding what areas had remained chronically out of compliance and how states had progressed in improving compliance over time. In addition, an analysis of the historical data could have provided insight into the impact of corrective action plans on reducing noncompliance.

Recommendation # III B.5

OSEP should undertake efforts to construct a database with all monitoring reports, corrective action plans, and compliance agreements ever issued by OSEP; to standardize all newly issued reports, plans, and agreements and capture in the database; and to undertake a historical analysis of compliance for each state.

A historical picture of each state's compliance status will greatly inform OSEP's monitoring work and allow for examining trends over time. In addition, it will provide a sense of the persistence of certain problems in particular states.

Finding # III B.6

Important IDEA requirements appeared to be unmonitored or under-monitored

The federal monitoring reports examined from all fifty states showed that compliance with one important requirement appeared not to be monitored and compliance with another appeared to be under-monitored.

IDEA required states to have "[p]rocedures for adopting, if appropriate, promising practices, materials, and technology proven effective through research and demonstration."[3] There was no evidence in the texts of the monitoring reports reviewed that compliance with this requirement had ever been monitored.

SEAs are required to "ensure" that public agencies "ensure" that "[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled."[4] In the fifty reports reviewed, OSEP had made findings of noncompliance with this requirement in two states—North Dakota[5] and Utah.[6] Both reports were issued in 1994, the first year of reports reviewed. There was no evidence in the texts of the other monitoring reports reviewed that compliance with this requirement had been monitored.

Recommendation # III B.6

OSEP should ensure that every IDEA requirement is monitored in every state at regular intervals, even if not core requirements or not identified by the state as problem noncompliance areas.

OSEP should develop a method for ensuring that requirements often overlooked in the monitoring process are monitored at regular intervals. The compliance status of states with noncore requirements or requirements rarely identified as problem areas during the pre-site visit (i.e., implementation of promising practices) should be monitored at regular intervals in every state.

Finding # III B.7

OSEP frequently took too long to issue monitoring reports.

For reports issued between 1994 and 1998, the amount of time from the date the monitoring visit ended and the date of the final report was greater than 90 days for 45 states, greater than 180 days for 27 states, and greater than 365 days for 12 states. The Department's present policy is to issue the report approximately five to six months (150–180 days) after the on-site visit, but recognizes the need to get the reports out more quickly. OSEP has requested additional staff, and is working on a new strategy to reduce lag time before the release of each monitoring report.

Recommendation # III B.7

OSEP should issue the monitoring report as soon as possible after the site visit, preferably within 60 days (two months).

OSEP is requesting resources and working on a new strategy to issue the monitoring reports in more timely fashion. An issuance date no later than two months following the end of the end of the monitoring visit should be established.

Finding # III B. 8

DoED has been making monitoring reports available through the Department of Education's web site as soon as they are issued.

The most recent reports (or the report's executive summary) from 27 states have been made available on the OSEP web site. All new reports will be placed there in the future. Placing the reports on the web site will allow timely access for a broad range of stakeholders and a greater awareness of the monitoring issues in each state.

Finding # III B.9

DoED began implementing a new "continuous improvement" monitoring process where the state is a collaborator with the Federal Government and other constituencies to assess the educational success of students with disabilities and to design and implement steps for improvement on an ongoing basis.

Recommendation # III B.9

DoED should conduct a formal assessment of the new continuous improvement monitoring process within the next three years. The assessment should incorporate broad stakeholder input, particularly from students with disabilities and their parents, on the effectiveness of the new process in improving compliance with Part B and producing improvements in educational results for students with disabilities.

Finding # III B.10

Some significant state noncompliance areas have changed over time.

At the start of the federal monitoring process, large numbers of children with disabilities were routinely and inappropriately placed in separate educational settings in many states. Recent findings have shown that while such routine inappropriate placements have decreased in many states, a lack of adequate supports to children placed in regular classrooms was still prevalent.

Finding # III B.11

States frequently failed to ensure compliance with the same requirement for years and for several rounds of monitoring.

Looking at the three most recent monitoring reports (ranging from 1983 to 1998) for each of six states, as a group they came into compliance with only18 of 66 noncompliant requirements (27%) identified in the first or second of the three monitoring reports. For 48 (73%) of the 66 noncompliant requirements found, either noncompliance was found again or no compliance finding was reported at all in the third monitoring report.

Of the 18 requirements with which states came into compliance, 10 (56%) had to do with the state's own administrative functioning (five—review and approval of LEA applications; three—complaint management; one—hearing decisions within time lines; and one—effectiveness of the monitoring system at identifying noncompliance).

Recommendation # III B.11

OSEP should strengthen compliance monitoring and enforcement by recognizing states that are performing well, offering ongoing technical assistance to states to correct noncompliance, and applying consequences consistently when improvement objectives are not met.

Finding # III B.12

The federal IDEA enforcement process has not provided clear and certain consequences for failures to correct noncompliance that would motivate the states toward compliance.

SEAs cannot be motivated to garner the will and the resources to come into compliance, when the record shows that sanctions rarely occur.

Recommendation # III B.12A

The Department of Education's approach to remedying state noncompliance should link

noncompliance findings with (1) measurable improvement objectives to be met within a defined time frame, and (2) a range of specific enforcement sanctions that will be incurred for failures to meet each of the improvement objectives within the specified time frames.

Recommendation # III B.12B

The Department of Education, the Department of Justice, and the Department of the Interior, with input from students with disabilities, their parents, and other stakeholders, should develop a broad range of sanctions linked to a state's failure to correct noncompliance within the time frames agreed upon in their corrective action plans.

A wider range of options is needed to allow more flexibility and consistency in the enforcement of IDEA. These options should clearly articulate the sanctions available with examples of circumstances in which each would appropriately be applied.

Finding # III B.13

Some state compliance monitoring systems are inadequate because of a lack of staff, lack of resources, and lack of a systematic, coordinated approach statewide.

Recommendation # III B.13

OSEP should increase its monitoring of state monitoring systems, offer targeted technical assistance to correct deficiencies, and enforce when the state fails to take corrective action.

Finding # III B.14

Compliance monitoring at both the state and federal levels is not sufficiently data-driven, objective, or consistent, relying too little on agreed upon indicators and measures of performance.

Recommendation # III B.14

The Department of Education should maintain a priority on working with the states to improve accountability for implementing IDEA through effective data collection and analysis.

OSEP should continue working with states to improve their compliance monitoring and enforcement capabilities through data collection related to key performance indicators and regular, thorough, and ongoing analysis of the data. Without these activities, the extent and nature of reported compliance problems cannot adequately be understood or corrected. Among the reported problems that require continuous monitoring are the provision of FAPE and related educational services to eligible youth with disabilities in state and local detention and correctional systems, as well as the disproportionate representation of minority students with disabilities in separate educational settings and in the state child welfare and juvenile justice systems.

Finding # III C.1

There is no federal complaint process for IDEA to complement and expand the scope of complaint handling systems at the state level.

There is a need for a federal complaint handling system to provide students with disabilities and their parents a vehicle for filing and resolving complaints alleging widespread or systemic violations occurring at the SEA or LEA levels. Because state complaint-handling systems are largely geared to addressing individual complaints, such a federal process would help to close an existing gap in the enforcement infrastructure.

Recommendation # III C.1A

Whenever Congress and the President approve an increase in the funding to be distributed to local schools under Part B of IDEA, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total increase in Part B funding to build the Department of Education's and Department of Justice's enforcement infrastructure to help drive improvements in state compliance and better results for children. Priorities for use of these funds should include a federal process for handling specific categories of IDEA complaints and the expansion of technical assistance for improving state complaint handling, monitoring, and enforcement systems.

Recommendation # III C.1B

Congress should amend IDEA to create a complaint handling process at the federal level to address systemic violations occurring in SEAs or LEAs.

Congress should designate the Department of Justice to administer the process and allocate adequate funding to enable it to take on this new role. This new federal complaint process should be designed to complement, not supplant, state-level complaint-handling and due process procedures. The federal process should be simple to use and easy to understand by parents and students. The Department of Justice should develop and disseminate explicit criteria for the types of complaints alleging systemic violations it will prioritize given its limited resources.

Finding # III C.2

Information about IDEA complaints filed with state complaint systems is often limited.

The only complaint process for IDEA is at the state level. Information and analyses about the nature and outcome of state complaints are not readily available to complainants or other stakeholders at the state level and are not nationally compiled on a state-by-state basis.

Recommendation # III C.2

The Secretary of Education should require states to submit annually a summary analysis of all state complaints alleging violations of IDEA that includes a listing of complaints received by category and by LEA, with a brief description of the allegations, opening and closing dates, and type of resolution.

Under IDEA, the Secretary of Education may require the states to submit any data deemed necessary to administer the law.[7] These analyses should inform OSEP's monitoring, compliance, and enforcement activities. This information should be shared with OCR and the Department of Justice. It should be widely disseminated to stakeholders in the state.

Finding # III C.3

State complaint systems under IDEA need improvement.

According to the Inspector General's report, state complaint systems should be improved and more intensely monitored by OSEP. While the IDEA '97 regulations intended to improve state complaint systems, OSEP has lacked the necessary resources to conduct such evaluations.

Recommendation # III C.3

OSERS should work intensively with states to improve state complaint systems.

OSERS should identify model practices in states and provide technical assistance for improvement of systems in states to include development of a statewide mechanism for tracking all complaints and capturing basic information about each complaint, such as nature of complaint, a time line for resolution, an outcome, and the satisfaction of the complainant with outcome. OSEP should monitor the adequacy of state complaint systems to produce accurate accounting of all complaints filed and data sufficient to analyze the effectiveness of complaint handling throughout the state.

Finding # III D.1

The Department of Education has identified six enforcement actions it has taken against states for noncompliance with IDEA Part B, all within the last six years.

According to information provided by the Department of Education, only six enforcement actions have been taken under IDEA Part B since its enactment. Five of these enforcement actions were related to attaching special conditions to the grant award or developing compliance agreements. The other was an attempt to withhold funds from a state, which was overruled by the court. All have occurred since 1993.

Recommendation # III D.1

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop objective criteria for utilizing compliance agreements and special conditions as enforcement actions.

These criteria should be based on certain outcomes of the monitoring process. For example, if a state fails to ensure compliance with a particular requirement for a certain period of time, after the provision of technical assistance and an opportunity for correction, it would immediately be required to develop a compliance plan. If such a plan were not fully implemented by a certain date, a greater sanction would be prescribed (see discussion under Part VII about new approaches to monitoring in state systems).

Finding # III D.2

The Department of Education has withheld federal funds from a state because of

noncompliance with Part B of IDEA only once in the past 25 years.

In 1994, DoED briefly withheld funds from the Commonwealth of Virginia because of a state policy that denied any services to special education students who were suspended or expelled from school. Although the Department lost its case against Virginia, IDEA was subsequently amended to clarify that the Virginia policy was illegal. The 1997 amendments to IDEA also explicitly gave DoED the authority to withhold a partial amounts of funds.

Recommendation # III D.2

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop a broad range of options for withholding partial funds from noncompliant states and the criteria (triggers) for when they will be used.

Consideration for how partial withholding of funds could be utilized might include the notion of withholding state administrative funds for a state that fails to ensure compliance with state monitoring requirements and using those funds to hire an independent entity to conduct state monitoring. Again, withholding of funds should never be a surprise to anyone. Rather, it should be the predictable result of certain behavior.

Finding # III D.3

Political resistance to IDEA enforcement from Congressional delegations and state administrations of the noncompliant state may have a chilling effect on enforcement.

DoED enforcement actions in Pennsylvania and Virginia resulted in letters from members of Congress and the Governor of Virginia, requesting that the Secretary rescind the actions. The Secretary did not rescind either action. In some instances, the members who wrote questioning and protesting the DoED's actions had key roles in overseeing DoED's funding or programs, particularly with respect to IDEA. Such political resistance may cause DoED to be hesitant in pursuing enforcement, impacting future enforcement efforts.

Recommendation # III D.3A

The Department of Education should take the lead in educating both Congress and state legislators about the failure of states to ensure compliance with IDEA and how this affects

children with disabilities and their families.

The Department of Education should exercise its leadership as enforcer of IDEA to educate federal, state, and local legislators about the extent to which the law has not been fully implemented and the toll on children with disabilities, their families, and their communities. Specifically, DoED should brief the members of each state delegation before its planned monitoring visits to discuss the technical assistance resources available to states in correcting compliance problems, enforcement options, and the long-term consequences of persistent noncompliance for children with disabilities. DoED should urge legislators to take responsibility for helping their states achieve compliance.

The Department of Education should also be proactive in implementing a well-timed and coordinated communication strategy for each planned enforcement action it takes, and it should foster dialogue about the issues. The strategy should include media outreach and briefings targeted to stakeholders and other interested parties, including federal, state, and local officials; parent groups; and others.

Recommendation # III D.3B

The Department of Education should post any letters it receives from members of Congress questioning enforcement actions related to IDEA on the DoED web site and distribute them to Parent Training and Information Centers, Protection and Advocacy Systems, and other legal advocacy organizations.

Such inquiries by members of Congress provide opportunities for parents and their advocates to educate Congress about IDEA noncompliance in their state and the toll it takes on their constituents.

Finding # III D.4A

The Department of Education has not yet provided policy guidance regarding criteria for referral to the Department of Justice, authorized by the 1997 amendments to IDEA.

While new regulations provide some information on the process of referral to the Department of Justice, they do not clarify the criteria for making such a referral.

Finding # III D.4B

The Department of Education has never referred a state to the Department of Justice for substantial noncompliance with IDEA.

Authority for the Department of Education to make such referrals was made explicit in the 1997 IDEA reauthorization.

Recommendation # III D.4

The Department of Education and the Department of Justice, with input from students with disabilities, their parents, and other stakeholders, should develop objective measures for determining "substantial noncompliance," the point at which a state will be referred to the Department of Justice for legal action.

IV. The National Compliance Picture Over Time:
Analysis of Annual Reports to Congress 1978–1998

Finding # IV.1A

There was no consistency in either format or content for reporting about IDEA monitoring in the Annual Reports to Congress between 1978 and 1998.

The changing definitions and language used to describe monitoring from one Annual Report to the next made it difficult to compare the status of monitoring/compliance findings over time. Major variations in the content organization of reports published in different years further challenged the reader in locating the information on monitoring.

Finding # IV.1B

The Annual Reports did not provide a picture of how compliance with IDEA changes over time.

A historical or longitudinal analysis of compliance is not required in the Annual Report by law.

Recommendation # IV.1

The Department of Education and the Department of Justice should issue an annual report to the President and Congress on IDEA monitoring, compliance, enforcement, and technical

assistance.

The Annual Report issued by DoED is not required to, and therefore does not, report on federal- and state-level enforcement activities or the due process/judicial system, a joint report by DoED and DOJ to address this information void is needed. This proposed joint report should include a description of all monitoring activities for the year (including corrective action plan follow-up visits), the findings of the monitoring activities in terms of compliance and noncompliance, and a description/analysis of cases in which the Department of Justice is involved. Complaints and investigations of the Department of Education's Office for Civil Rights that are IDEA-related should be presented. The report should present the current activities and findings in a context and format that will allow for historical/longitudinal analysis.

Finding # IV.2

There was little information in the Department of Education's Annual Reports to Congress about the relationship among findings of state noncompliance with IDEA, technical assistance used by states to achieve compliance, and enforcement actions taken for failure to correct noncompliance.

Links between compliance monitoring, technical assistance, and enforcement action were not evident in the Annual Reports, making it difficult to piece together a picture of the state of IDEA compliance across the nation. Reporting on enforcement authority and activity at the federal or state levels, the due process/judicial system, or even court cases in which the Department of Justice is involved is not required by law.

Recommendation # IV.2

The Department of Education and the Department of Justice should routinely issue reports that provide longitudinal analyses tracking noncompliance findings, informal and formal enforcement actions taken by the Federal Government, and use of technical assistance resources to correct noncompliance with IDEA for each state over time.

These reports would enable the reader to determine how states have responded to corrective action, technical assistance, and enforcement actions. These reports would provide the data needed to document progress and achievements as well as identify areas that need continued improvement.

V. IDEA Litigation Challenging State Noncompliance

Finding # V.1

Parent advocacy and litigation have been critical means for exposing and remedying persistent and systemic IDEA noncompliance.

The law depends on litigation in order to function effectively. Parents of children with disabilities are uniquely situated to identify and raise the legal issues related to persistent noncompliance with IDEA. Their financial situations, however, typically do not permit sustained private legal action, and not enough public resources are available to assist them.

Recommendation # V.1A

Whenever Congress and the President approve an increase in the funding to be distributed to local schools under Part B of IDEA, Congress and the President should appropriate at the same time an amount equal to 10 percent of the total Part B increase to fund free or low-cost legal advocacy services to students with disabilities and their parents through public and private legal service providers, putting competent legal assistance within their financial reach and leveling the playing field between them and their local school districts.

Litigation by parents is still a necessary recourse when administrative action at the state level to obtain FAPE for their child has failed. In some states, litigation has also been a vital catalyst to a more effective implementation of IDEA across the board. Access to legal assistance that could result in obtaining an appropriate education for their children remains beyond the financial reach of too many families. Federal funds currently available under the Developmental Disabilities Act, the Technical Assistance Act, the Rehabilitation Act, and the Protection and Advocacy for Individuals with Mental Illness Act for low cost legal services must be supplemented to begin to address the need. This will be a start toward putting families on a more equal playing field with school districts that use tax dollars to hire legal counsel to assist them in avoiding compliance with IDEA requirements.

Recommendation # V.1B

OSEP should endorse the allocation of additional funding to public and private legal service

providers, including the state PTIs, P&As, and IL centers; the private bar; and nonprofit legal services centers for the purpose of carrying out a coordinated strategy for making legal advocacy services more available to students with disabilities and their families.

Finding # V.2

Pilot programs in compliance monitoring and enforcement at the state level are testing the use of a broad range of flexible enforcement options in the context of corrective action plans linking specific noncompliance findings with agreed upon enforcement options and time lines.

Recommendation # V.2

OSEP should develop and test the use of state compliance agreements that incorporate appropriate sanctions selected from a broad range of enforcement options, and link them to the state's failure to correct specific noncompliant conditions within the agreed time frame.

OSEP should also encourage the state's use of sanctions in this manner when the state's compliance monitoring indicates that LEAs are failing to correct findings of noncompliance.

VI. The Role of the Department of Justice

Finding #VI.1

The Department of Justice does not have independent authority under IDEA to pursue IDEA investigations and enforcement against noncompliant educational entities.

The Department of Justice can pursue enforcement action against state educational entities only if a referral is made from the Department of Education.

Recommendation # VI.1

Congress should amend IDEA to provide the Department of Justice with independent authority to investigate and litigate against school districts or states where pattern and practice violations of IDEA exist.

The Department of Justice should play a greater role overall in the enforcement of IDEA. DOJ is not plagued by the conflicting roles of grant manager and law enforcer with the same entity. As an agency that specializes primarily in enforcing the law, DOJ's first responsibility is to those protected by the laws it enforces. DOJ is not as susceptible to political pressure from states and their Congressional delegations when initiating enforcement action because it has no pre-existing economic relationship (grant maker–grantee) with the defendant. DOJ can initiate an investigation upon receiving a complaint or other information and coordinate with the Department of Education throughout case development. Information about coordinated enforcement activities should be included in DOJ's Annual Report to Congress.

Finding # VI.2

The Department of Justice has played a minimal role in IDEA litigation, participating in only 26 IDEA cases at the Supreme Court and Appellate Court levels in the past 25 years.

Recommendation # VI.2

The Department of Justice should exercise greater leadership in IDEA enforcement by initiating litigation against noncompliant states, publicizing its actions, and collaborating with stakeholders on their legal stance and its implications.

The Department of Justice should take the initiative to identify key cases involving noncompliance with important provisions of IDEA such as LRE, and aggressively litigate to put noncompliant states on notice that the law is now being enforced. In doing so, DOJ should actively seek the input of key stakeholders on their legal positions vis-a-vis these cases and the policy implications.

Finding # VI.3

The Department of Justice has no structured mechanism for finding or determining what IDEA cases to participate in, other than reviewing legal journals and networking informally with advocacy groups.

Recommendation # VI.3

The Department of Justice should develop a system for tracking and monitoring litigation related to IDEA and articulate explicit criteria for determining DOJ participation.

VII. Improving Public Awareness: Technical Assistance and Public Information for Students with Disabilities, Their Families, and Advocates

Finding # VII.1

During 1999, OSEP committed about one-third of its technical assistance resources to informational programs for students, parents, and families—an increase from previous years.

This increase showed a clear commitment to enhancing the ability of students and parents to participate in the educational planning process by developing and disseminating training and informational materials and resources, providing peer and professional support, and strengthening parent organizations through capacity building.

Recommendation # VII.1

OSERS' should strongly promote inter- and intra-agency collaboration to leverage existing resources available to help states correct areas of noncompliance. The objective of this collaboration should be to make available the technical assistance materials and programs SEAs and LEAs may request or be required to accept in order to correct specific noncompliance problems.

Finding # VII.2

Only 2 percent of OSERS' resource list publications provided support and information to students themselves in planning their own educational and transition programs.

OSER's resource materials and programs needed greater emphasis on helping students with disabilities to understand and advocate for their civil rights as students in public schools and in the transition to living as adults with disabilities in their communities. As OSERS continues to stress transition from school to work and community life, students and their parents must understand how IDEA, the Americans with Disabilities Act (ADA), the Fair Housing Act (FHAA), and Section 504 of the Rehabilitation Act impact their opportunities for meaningful integration, employment, and access to post-secondary educational programs.

Recommendation # VII.2

OSERS' should prepare students for effective self-advocacy in their education planning and transition to employment and independent living by (1) expanding its resource publications

dealing with these issues, (2) developing training initiatives and technical assistance materials, and (3) supporting model student-led self-advocacy programs.

OSEP should develop materials and provide training for students with disabilities and their parents about the provisions of the ADA, Section 504, FHAA, and other pertinent disability laws, to help young adults with disabilities understand their civil rights and inform them about the program's available to assist their transition from school to independent living in the community, employment, and post-secondary education. Greater emphasis on self-advocacy also will prepare students with disabilities and their families to support state and federal compliance monitoring and enforcement activities more effectively.

Finding # VII.3

OSEP's outreach priorities and resource materials did not address judicial interpretations of IDEA and OSEP policies in a way that assists students with disabilities and their parents in understanding of their implications.

Since schools are familiar with legal developments, students and parents can be disadvantaged without this same information.

Recommendation # VII.3

OSEP should fund the development of materials and provide training and technical assistance for parents and students on the implications of judicial interpretations of IDEA court cases and OSEP policies.

Finding # VII.4

Current technical assistance initiatives have not met the need for materials, training, and technical assistance to help students with disabilities and parents understand and evaluate their states' monitoring system.

Recommendation # VII.4

OSEP should initiate and develop a program to train students with disabilities and parents in evaluating the effectiveness of their state's IDEA compliance monitoring systems and their state's self-assessment process.

Finding # VII.5

Twenty-two percent of technical assistance and informational materials from the resource list were either directed to non-English speaking audiences or available in languages other than English.

Recommendation # VII.5

OSERS should continue to expand its initiatives to serve non-English speaking groups and create culturally appropriate training materials by increasing outreach to minority students and parents; enhancing the capability of the Technical Assistance Alliance, PTIs, the National Rehabilitation Information Center (NARIC), and NIDRR research projects to create culturally appropriate non-English language materials; and translating more existing materials into languages other than English.

This percentage is a notable increase from previous years, yet there are still too few culturally appropriate materials available in languages other than English in relation to the number of students and their families needing them.

Finding # VII.6

The need for training of students with disabilities and their parents in the requirements of IDEA is especially urgent in communities where noncompliance persists over time. Despite a steady increase over time in the amount of technical assistance materials available to under-served populations of students with disabilities and their families, noncompliance still tends to persist at a higher rate and over longer periods of time in these communities.

The resource list shows that materials are still scarce for students with disabilities in the juvenile justice, immigration and naturalization, and child-welfare systems, as well as for students attending schools operated or funded by the Bureau of Indian Affairs (BIA). Multicultural and language-appropriate materials for these groups are scarcer still.

Recommendation # VII.6A

OSEP should expand its program support for initiatives that promote educational opportunities and rights for under-served populations of children and youth with disabilities and their families. More programs are needed to explain IDEA's requirements in light of the

unique needs of students with disabilities involved in the juvenile justice, immigration and naturalization, and child-welfare systems, as well as in schools operated or funded by the Bureau of Indian Affairs (BIA), to their families and advocates, as follows:

- *culturally appropriate technical assistance to ensure the ability of Native American children with disabilities, their families, tribal leaders, and advocates in every interested tribe to participate as full partners in implementing IDEA in their communities. Culturally appropriate training and technical assistance should be developed and delivered through the satellite offices of disability technical assistance centers (DBTACs) around the country that are managed and staffed primarily by Native Americans.*
- *training of the appropriate players in the juvenile justice system, including judicial and institutional personnel, in IDEA's civil rights requirements, how they apply within the juvenile justice system, and ways the law can be used to help minimize detention of children with disabilities in the juvenile justice system.*
- *training of the appropriate players in the immigration and naturalization and child welfare systems, including federal and state agency, judicial, and institutional personnel, in IDEA's civil rights requirements.*

Recommendation # VII.6B

OSEP, in conjunction with the Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP), should also fund training programs for special education lawyers on applying IDEA in the criminal justice system, and for public defenders and staff on IDEA's educational requirements to enable both to advocate more effectively for the educational rights of students with disabilities involved in state and local criminal justice systems.

Finding # VII.7A

The Department of Education's IDEA technical assistance program addressed a wide range of important information and training needs. The overall strategy, however, did not seem to place priority on developing a comprehensive, coordinated, and targeted technical

assistance system in each state focused on empowering students with disabilities and their families for effective self-advocacy to address documented areas of noncompliance statewide.

Finding # VII.7B

The advocacy training programs and services available in most states fell far short of the existing need.

Recommendation # VII.7

The Department of Education should give priority support to the formation of a comprehensive, high quality, and coordinated technical assistance system in each state by developing a separate OSEP-administered funding stream to aid federally funded advocacy groups in coordinating and making available self-advocacy training programs, resources, and services to students with disabilities and their parents throughout the state. Elements of the coordinated technical assistance systems should include the following:

- ***The availability of a lawyer at every state PTI center, protection and advocacy agency, and independent living center able to provide competent legal advice to students with disabilities and their parents in advocating for their rights.***
- ***Self-advocacy training programs for students with disabilities and their parents focused on civil rights awareness, education and transition planning, and independent living in the community.***
- ***The establishment of a national backup center to make legal materials, training, and other supports available for attorneys working on IDEA cases and issues at the state level.***
- ***Expansion of involvement by the private bar and legal services organizations in providing legal advice to students with disabilities and their parents in advocating for their legal rights under IDEA.***

The key disability advocacy organizations at the state level (PTIs, P&As, and IL centers) need additional funding to effectively implement a joint collaborative strategy for increased outreach and education of the general public and state legislators, technical assistance and advocacy for transition planning and services, independent monitoring of state compliance with IDEA, and affordable legal assistance to parents advocating for their child with a disability. The goal of the collaborative strategy is to increase each state's compliance with FAPE, LRE, Individual Education Plan (IEP), Transition, General Supervision, Procedural Safeguards, and Protection in Evaluation.

1. U.S. Department of Education reviewer comment on the courtesy review draft of this study, received August 3, 1999, p.98.

2. U.S. Department of Education, Office of Special Education Programs, *West Virginia Report*, p.2, April 22, 1997.

3. 34 CFR § 300.382 (1999).

4. 34 CFR §§ 300.550(a) (1999) (current to March 12, 1999); 300.552(c) (1999) (current to March 12, 1999).

5. U.S. Department of Education, Office of Special Education Programs, *North Dakota Report*, p.10-11, May 26, 1994.

6. U.S. Department of Education, Office of Special Education Programs, *Utah Report*, p.19-20, November 17, 1994.

7. 20 U.S.C. §1418(a)(2).

Appendix L

Mission of the National Council on Disability

MISSION OF THE NATIONAL COUNCIL ON DISABILITY

Overview and Purpose

NCD is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate.

The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Specific Duties

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.
- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the federal, state, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that operate as disincentives for individuals to seek and retain employment.
- Making recommendations to the President, Congress, the Secretary of Education, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies, respecting ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.
- Providing Congress, on a continuing basis, advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.
- Gathering information about the implementation, effectiveness, and impact of the

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

- Advising the President, Congress, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

- Providing advice to the Commissioner with respect to the policies and conduct of the Rehabilitation Services Administration.

- Making recommendations to the Director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities.

- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of NCD to promote the full integration, independence, and productivity of individuals with disabilities.

- Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report.*

International

In 1995, NCD was designated by the Department of State to be the official contact point with the U.S. government for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

Consumers Served and Current Activities

While many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, it was NCD that originally proposed what eventually became the Americans with Disabilities Act (ADA). NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of ADA, improving assistive technology, and ensuring that persons with disabilities who are members of minority groups fully participate in society.

Statutory History

NCD was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed NCD into an independent agency.

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